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REPORT

OF THE

COMMISSIONERS OF INQUIRY

OF THE

CHARGES

AGAINST

ALEXANDER FRANCIS BALL, ESQ.,

AGAINST THE

MAGISTRACY OF DUNGANNON;

ALSO ON THE

Charges against the Magistrates contained in a Memorial addressed
to His Excellency the Lord Lieutenant by certain Roman
Catholic Inhabitants of Dungannon;

WITH

MINUTE EVIDENCE AND APPENDIX.

Ordered to be printed by Command of Her Majesty.



DUBLIN

Printed by ALEXANDER THOM, at the ABBEY-STREET.

FOR THE SECRETARY OF STATE.

1872.



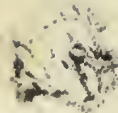
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REPORT

OF THE

COMMISSIONERS OF INQUIRY

ON THE

CHARGES

MADE BY

ALEXANDER FRANCIS BALL, ESQ.,

AGAINST THE

MAGISTRACY OF DUNGANNON;

ALSO ON THE

CHARGES AGAINST THE MAGISTRATES CONTAINED IN A MEMORIAL ADDRESSED
TO HIS EXCELLENCY THE LORD LIEUTENANT BY CERTAIN ROMAN
CATHOLIC INHABITANTS OF DUNGANNON,

WITH COPY OF

LETTER FROM THE LORD CHANCELLOR TO THE UNDER SECRETARY
TO THE LORD LIEUTENANT,

AND THE

MINUTES OF EVIDENCE AND APPENDIX.

Presented to both Houses of Parliament by Command of Her Majesty.



DUBLIN:

PRINTED BY ALEXANDER THOM, 87 & 88, ABBEY-STREET,
FOR HER MAJESTY'S STATIONERY OFFICE.

1872.

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DUNGANNON INQUIRY COMMISSION, 1871.

REPORT.

TO THE RIGHT HONORABLE JOHN POYNTZ, EARL SPENCER, K.G.

LORD LIEUTENANT-GENERAL AND GENERAL GOVERNOR OF IRELAND.

MAY IT PLEASE YOUR EXCELLENCY,

On the 12th day of August, 1871, we had the honour to receive your Excellency's warrant, together with a letter of instructions from the Under-Secretary, Thomas Henry Burke, esq., and a file of papers ; those bearing upon the subject-matter of the Inquiry we were directed to hold will be found in the Minutes of Evidence or in the Appendix hereto.

Your Excellency's warrant will be found at length in page 1 of the Minutes of Evidence accompanying this report, and the letter of Mr. Burke will be found in the Appendix hereto. See App. p. 199.

Upon the 12th day of August, we caused notice to be sent to the magistrates named in the warrant, that we would hold an open Court of Inquiry at Dungannon Court-house on the 16th day of August, touching the matters referred to us for investigation. We also caused a similar notice to be given to several of the Roman Catholic inhabitants of Dungannon, who had signed the memorial referred to in said warrant, with a request that they would so inform the parties who had united with them in presenting same; and Captain Ball, R.M., received a similar notice. See App. p. 199.

In order to give all due publicity to our intended proceedings, and for the information of all concerned or interested therein, we caused a copy of the notice of holding said Inquiry to be published in two Dublin evening newspapers of the 13th August, and the *Dublin Gazette* of the 14th August; copies of the notices will be found in the Appendix hereto. See App. p. 199.

We have to report to your Excellency that we believe every person interested in the intended investigation had ample notice of the time and place of holding same, and that we opened our Court at Dungannon Petty Sessions Court-house on Wednesday, the 16th August, 1871.

The warrant of your Excellency before mentioned was read, and the object of the Inquiry was briefly explained by the Senior Commissioner, who also apprised the parties present that we would procure the presence of any official witnesses required on being furnished with their names, and that we would also grant summonses to any of the parties for any other witnesses they might desire to examine.

The charges made by Captain Ball at the Inquiry referred to in your Excellency's warrant were and are contained in answers given by him, on oath, to questions put to him at that Inquiry, and which are as follows :—

“ALEXANDER FRANCIS BALL, Esq., Resident Magistrate, Dungannon, being sworn and examined by the President, saith :—

“I consider that he (Sub-Inspector Smith) is trammelled in the fair and impartial execution of his duty by his friendship with some of the neighbouring gentry and magistrates, who are considered as sympathisers with the Orange party. I consider that there was a partisanship exhibited in the administration of justice in regard to prosecutions in these cases.

“But the constabulary were not administering justice? I consider that the friendship of Mr. Smith with the magistrates was the cause of this partiality in the administration of justice.

“Cross-examined by Sub-Inspector *Smith*.

“I did know of your disobeying the magistrates, in not having parties summoned who took part in drumming parties. Frequently—I don’t think I complained to you of not having done so, as I considered it would be useless to do so, because I consider there was partiality shown to those parties, both by the magistrates and constabulary. I mean you as commanding the Dungannon constabulary.”

The memorial from the inhabitants referred to in your Excellency’s warrant is as follows :—

“To His Excellency EARL SPENCER, Lord Lieutenant-General and General Governor of Ireland.

“THE MEMORIAL of the CATHOLIC CLERGY, MERCHANTS, and other INHABITANTS of DUNGANNON and neighbourhood,

“HUMBLY SHEWETH :—

“That for a great number of years we have been kept in constant alarm and terror by drumming parties: which have, so often as three times a week, beaten and played into the town of Dungannon, creating animosity and endangering the public peace :

“That on many occasions breaches of the peace and destruction of property have been committed by those drumming parties; and that on a late occasion windows were smashed in the Catholic Chapel, and in the house of a man whose wife was in labour, to the great danger of her life; for which grievous offences against the law no person was made amenable. One local magistrate, Mr. Stanley, when the breaking of the Chapel windows was mentioned to the Bench, declared publicly that he would have nothing to do with any such investigation, as he considered it a ‘trivial offence’ :

“That on another occasion, just outside the town of Dungannon, several hundred Orangemen, with drums and fire-arms, met for the purpose of burning in effigy Mr. Dowse, a native of Dungannon, and at present Her Majesty’s Solicitor-General for Ireland, firing shots for more than one hour, yet no police were sent to take their names, or watch their movements :

“That this party afterwards marched into the town of Dungannon, beating drums and firing shots, until encountered by an opposite party at a place called Moon’s Corner, where stones were thrown from both sides, windows broken, and one magistrate wounded; and that all this occurred in the presence of two magistrates—Colonel the Honorable Stewart Knox, M.P., and Mr. Newton—one sub-inspector, and at least twelve policemen, who also had arrived on the scene; yet no arrests were made, nor prosecutions followed this fearful outrage, though many, composing both mobs, must have been known to both magistrates and police :

“That from the foregoing facts, as well as many others that can be adduced, your memorialists believe that both the local magistrates and police authorities here took no effective means to stop proceedings so offensive to us, and so dangerous to the peace of this locality. And memorialists therefore pray that your Excellency will order a Commission of Inquiry into the manner in which the law has been enforced and administered in this town and neighbourhood for several years past.

“For which your memorialists will, as in duty bound, ever pray.

“(Here follow the Signatures).

“Dungannon, June 23rd, 1871.”

The several parties who had received notice from us of the holding of said Inquiry were represented by the following counsel :—Mr. Sergeant Armstrong for the magistrates, Mr. Michael Joseph Barry for Captain Ball, and Mr. William M’Laughlin for the memorialists; and the presence of these gentlemen on the part of their respective clients assured us that the matters complained of would receive the most complete and searching investigation.

After some discussion we determined to proceed with the Inquiry in two distinct branches: first, as to the charges made by Captain Ball against the magistrates, and to hear the evidence, if any, to sustain and refute same; and secondly, the charges contained in the inhabitants’ memorial against the magistrates, and the evidence, if any, to sustain and refute the same; and, having made arrangements as to the mode of procedure, the summoning of witnesses, and the interchange of documents, with which it is unnecessary to trouble your Excellency, upon the request of all concerned the Inquiry was adjourned to the following day.

On Thursday, the 17th August, we resumed the Inquiry, and continued it up to a late hour on the evening of the 24th August, during which time we examined, in all, forty-nine witnesses; and, at the request of the parties, we issued summonses for many more, but some of those examined came forward voluntarily and without being summoned. The evidence given before us your Excellency will find in detail in the Minutes of Evidence accompanying this Report.

Captain Ball was called and examined by his counsel, Mr. Barry, and stated that the above extracted passages from his evidence, which were read to him from the shorthand writer’s notes, were correct; that he had given that evidence, and that he had signed as true the deposition from which they were taken. We do not think it necessary to refer your Excellency to Captain Ball’s evidence in much detail, as we have the satisfaction of stating that on his attention having been called to the language used by him in those answers, he admitted that it conveyed a serious imputation upon the magistrates referred to, and undoubtedly imputed to them partisanship, partiality, and prejudice in the discharge of their judicial duties; he then, in the most distinct and unequivocal terms, disclaimed any intention of making such an imputation against them,

and declared that he had never meant to make, and did not then make, any such charge, and added that he never intended to convey the idea that the magistrates were acting in disregard of their duty, or with partiality or corruption.

In explanation of the language which he had used in his answers at the former Inquiry, Captain Ball stated that in and by those answers he intended to refer not to any actual experience of his own, with reference to matters which would be unfavourable or prejudicial to his brother magistrates in the discharge of their duty, but to impressions left on his mind from communications and remarks made to him from time to time by Roman Catholic inhabitants of Dungannon and the neighbourhood, and which satisfied him that an impression prevailed that the magistrates did not administer the law fairly in party cases. We may add here that there is no doubt on our minds from the evidence given before us by many witnesses that such an impression extensively exists amongst the Roman Catholics in Dungannon.

See Ev. Nos. 14, 17, 18, 19, 5867.

It is also but just to Captain Ball to state that the expressions originally used by him were not the result of reflection or premeditation. He stated he was called as a witness without more than a few moment's notice ; that he had no previous information or intimation of the particular subject upon which he was to be examined, and that he had no reason to know or suspect that he would be asked any question with reference to the conduct of his brother magistrates.

Captain Ball's Ev. See Nos. 3, 4, 5, 6, 5865.

We cannot, in discharge of our duty, while acquitting Captain Ball of all intentional misconduct or misrepresentation, fail to express our regret that want of reflection, or, at the time, a confusion of thought or ideas should have betrayed him into the use of language which plainly gave occasion for serious public misconception and unfortunate discussion ; and now, after a searching investigation, we have to report to your Excellency that there has not appeared in evidence before us one fact, or a particle of evidence upon this first branch of the inquiry, to sustain the supposed charge of Captain Ball as conveyed in his answers to the questions above stated.

Captain Ball's Ev. See 19-122, 137-140.

We have further to report upon this first branch of our investigation, that in all matters of magisterial duty, we could not and cannot, in our judgment, separate the acts and responsibility of Captain Ball from the other members of the Dungannon bench. We think he was bound, if he found it necessary to differ from or disapprove of any act of his brother magistrates, to confer with, and explain his views to them ; and while we do not overlook the advantage to the public of harmonious co-operation and unity of purpose amongst the magistrates presiding, yet it appears to us that it was manifestly his duty to express to them his dissent from their proceedings, if he found it necessary to dissent from them, and when he failed so to do, he must, if silent, be taken to have acquiesced in their acts, and must share their responsibility before the public.

The first branch of the inquiry closed with the evidence of Captain Ball, and we then announced our readiness to investigate the charges contained in the memorial of the Roman Catholic inhabitants.

At the commencement of this branch of the inquiry, Mr. M'Laughlin, on the part of the memorialists, sought to give evidence to impeach the conduct and acts of the police force in Dungannon for several years past, and he required us to permit him to go into such an inquiry ; but on consideration of the terms of your Excellency's warrant, and the letter of the Under-Secretary, we declined to permit him to do so, as not being a subject which we were authorized or required by your Excellency to investigate. We trust that we shall have your Excellency's sanction for so doing. The arguments addressed to us with reference to this portion of the case will be found by your Excellency in pages 21 to 26 of the printed evidence.

See Ev. p. 22-26.

For convenience of reference we take the charges as set forth in the memorial *seriatim*, premising that upon the application of Mr. Sergeant Armstrong we directed the memorialists to furnish a list of the specific acts intended to be relied upon in sustainment thereof, with the dates.

The details so required were furnished in due course, and are set forth in the Appendix to this Report. See App. p. 199.

With reference to the first paragraph in the memorial, viz. :—

“ That for a great number of years we have been kept in constant alarm and terror by drumming parties, which have so often as three times a week beaten and played into the town of Dungannon, creating animosity and endangering the public peace ;”

we have to report to your Excellency that the testimony of all the witnesses given before us, and comprising as it did that of all the magistrates, the County and Sub-Inspector and other members of the Royal Constabulary force, clergymen and civilians of both persuasions, was unanimous as to the existence of drumming parties in the town

See Ev. *passim*.

and immediate neighbourhood of Dungannon, and has satisfactorily established the following facts :—

That unquestionably there were occasions for well-founded terror and alarm, when in anticipation of, and during the well-known anniversary celebrations of the events of the 1st and 12th July, drumming parties in numbers varying in extent from 20 and 30 to 300, and on some occasions to over 2,000, were organized and assembled in and near the outskirts of the town of Dungannon; and though we think it an exaggeration for the memorialists to state that the Roman Catholic inhabitants were kept for a considerable number of years in constant terror and alarm, yet we have come to the clear conclusion upon the evidence laid before us, to which we refer your Excellency, that the party manifestations referred to in this paragraph have, on those anniversaries, increased within the last five years; that large numbers of persons composing them were armed with various weapons; that acts of violence were committed by them, and that conflicts took place between them and large crowds of the Roman Catholic party who opposed them; that they are undoubtedly a source of annoyance and irritation to the Roman Catholic inhabitants; that they tend to exasperate their feelings, and are calculated to provoke and produce counter demonstrations, and thus lead to collisions, and to seriously endanger the public peace.

The second paragraph of the memorial is as follows :—

“That on many occasions breaches of the peace and destruction of property have been committed by those drumming parties; and that on a late occasion windows were smashed in the Catholic chapel, and in the house of a man whose wife was in labour, to the great danger of her life, for which grievous offences against the law no person was made amenable. One local magistrate, Mr. Stanley, when the breaking of the chapel windows was mentioned to the bench, declared publicly that he would have nothing to do with any such investigation, as he considered it a ‘trivial offence.’”

We have to report in reference to this paragraph, that evidence was laid before us to sustain the allegation that breaches of the peace have from time to time been committed by the drumming parties; that windows have been broken, and stones flung at the houses of some of the Roman Catholic residents of the town; but we have to add, that though undoubtedly the drumming parties appear on all occasions to be the aggressors and challengers, the lower order of the Roman Catholics of Dungannon are quite as ready to obstruct the drumming parties proceeding on their route to meet their associates, either from the town or when returning to it, and that on these occasions sometimes the stone-throwing originates with one party, sometimes with the other. It must not, however, be forgotten that the evidence from all sides—the magistrates, the inhabitants, and the public authorities—establish conclusively the fact that the drumming and marching are meant as a challenge by the Orange party, as they designate themselves, and are regarded and received as such by the Roman Catholics.

With regard to the charge that the windows of the Roman Catholic chapel were smashed on a recent occasion, and also those of a man whose wife was in labour, and that her life was endangered.

The transaction thus adverted to was this :—On the 23rd of April, 1869, a drumming party consisting of about 200 persons passed through Dungannon beating drums and playing fifes. Most of the party had passed the Roman Catholic chapel, but stragglers still followed, when, at this period, and before the party had quite cleared the town, three or four panes of glass were broken in the chapel, and a window in the house of a Roman Catholic named Houston was broken about the same time. We see no reason to doubt that these injuries were committed out of mere wanton mischief and bravado by some reckless person or persons forming part of this drumming party. The circumstance that stones were thrown at the chapel was viewed as a deliberate and premeditated insult to the religious feelings of the Roman Catholics; it was regarded with great indignation, and created considerable excitement amongst the members of that community. We have attentively examined the evidence bearing upon this matter, and, having sifted it thoroughly, we report to your Excellency that the failure to detect and bring to justice the perpetrator or perpetrators of this outrage was in no degree attributable to the magistrates. They seem to us to have acted with prudence and discretion, and a sincere desire to perform their duty to the uttermost, and with a clear determination, if possible, to bring the offenders to justice. The sub-inspector had caused this drumming party to be followed and watched with a view to identification. Accordingly, three of the number were identified and summoned for a breach of the “Party Processions Act,” and not for being engaged in an unlawful assembly; for, if the latter were the charge—having regard to the evidence of sub-inspector Smith and others upon the tendency of these demonstrations, their irritating and exasperating character, the uncontradicted testimony of the witnesses examined before us that they are meant and received by

Rev. P. Quinn.
See Ev. Nos. 542–546, 550–571, 633–638.

County-Inspector Heard, 760–763, 826–846.

Ev. James Kelly, 1408.

Patrick Flanagan, 1869.

John Hayden, 2513–15.

Courtney Newton, 4116, 3925.

Colonel Knox, 5597–5604.

See Ev. John Hayden, 2502–2724.

Sub-Inspector Smith's Ev. *passim*.

See Ev. County-Inspector Heard, Nos. 930–933.

See Ev. County-Inspector Smith, Nos. 5135–5266.

See App. p. 200.

opposing parties as a direct challenge to fight, coupled with the fact that similar ones had already led to serious breaches of the peace—it is difficult to conceive why informations should not have been received against the three men so identified. It appeared plain to us that the offence intended to be reached and dealt with under the summons was a breach of the “Party Processions Act,” and upon the evidence before us as contained in the depositions, no such offence was proved; and we think, having regard to what the defendants were called upon to answer by the summons, which was appended to the depositions and forwarded to the Law Adviser, that gentleman most properly advised the magistrates to the effect that no breach of the “Party Processions Act” was disclosed in the depositions, and that the case should be dismissed. It further appears in connexion with this transaction that there was no evidence to show who the person or persons were who broke the windows, though it was diligently sought for by the police. We have further to inform your Excellency that, though we are satisfied Houston’s wife was very close to her confinement, and, no doubt, must have been terrified and alarmed by the breaking of the window of her house, it was not proved or attempted to be shown that her life was endangered or that she suffered in health from the occurrence.

See App. p. 200.

See App. p. 200.

With regard to the allegation also contained in this paragraph :—

“That Mr. Stanley, one of the local magistrates, when the breaking of the chapel windows was mentioned to the bench, declared publicly that he would have nothing to do with any such investigation, as he considered it a trivial offence;”

we have to report to your Excellency that the language attributed to Mr. Stanley, which was in substance sworn to as correct, seems to have caused some excitement, and no doubt contributed to some extent in increasing the suspicion entertained by the Roman Catholics as to the feeling of the Dungannon bench in respect of party cases, or those having any sectarian aspect; and it appears to us, that whatever may have been the actual words employed by Mr. Stanley they were indiscreet, for their possible effect seems to have induced at least two of his brother magistrates openly to dissent from them, and we think it much to be regretted that Mr. Stanley did not, when his attention was called to the language he had used, immediately take the opportunity of explaining his meaning, as he did in his evidence before us. We are, however, gratified in reporting to your Excellency, that Mr. Stanley when examined, strongly, and we have not the least doubt, sincerely, repudiated the construction put upon his observation, and explained that when the occurrence of the 23rd April, before adverted to, was being investigated before him and the other magistrates, and pending an adjournment, the sub-inspector, Mr. Smith, having requested a private investigation in the magistrate’s room with a view to the search for evidence to identify anyone concerned in breaking the chapel windows, he believed he had said, but what he certainly intended to convey was, that he considered it a trivial investigation, viz. : the inquiry and search for witnesses, which properly and naturally belonged to the police, and that the magistrates ought to be the judges of the evidence when produced before them, and not the parties to seek it out. He further stated, that far from thinking intentional injury to a house of worship of any sect a trivial offence, he regarded it as a very serious outrage. Accepting this explanation as we did, and believing it to have been frankly and honestly given, we thought it our duty to express at the close of the Inquiry, as we also now do to your Excellency, our opinion that Mr. Stanley had most thoroughly exculpated himself from the charge preferred against him, but that it was to be regretted he had not at an earlier period set right a misconception which his words were calculated to produce.

See Ev. Courtney Newton, 3787–3789.

See Ev. Charles Stanley, 4164–4174.

The third paragraph of the memorial is as follows :—

“That on another occasion, just outside the town of Dungannon, several hundred Orangemen, with drums and firearms, met for the purpose of burning in effigy Mr. Dowse, a native of Dungannon, and at present Her Majesty’s Solicitor-General for Ireland, firing shots for more than one hour, yet no police were sent to take their names, or watch their movements.”

With reference to the above charge, having thoroughly investigated same, we have, upon the evidence applicable thereto, come to the conclusion that the transaction does not appear to have been of such a nature as to have demanded or required the intervention of the magistrates, or to have called for any action on their part. It appears that some few days prior to the event mentioned in this paragraph, intelligence having been received in Dungannon that Mr. Dowse, M.P., the Solicitor-General for Ireland, and a native of Dungannon, had been successful in an election petition tried in Derry, his admirers in Dungannon celebrated his success shortly after by burning tar-barrels, shouting, cheering, and other demonstrations of rejoicings. This display appears to have been carried on without violence or obstruction from the opposite party, and no arrests were made or summonses issued against any of the persons concerned in this natural ebullition of feeling. Some few evenings after a counter-demonstration

Hayden's evidence,
2788-2791.

was organized, and it was reported that Mr. Dowse's effigy was to be burnt. Accordingly a party of Orangemen assembled close to Dungannon, at a place called Windmill Hill, and fires were observed to be burning, and it was said, but there was no evidence before us to show, that an effigy of Mr. Dowse was burnt; there were drums beaten in the usual manner, and the report of gunshots was heard. Now, considering that the previous demonstration in favour of Mr. Dowse was not prohibited or interfered with, and that with the exception of shots being fired, a circumstance much to be condemned; this opposing one was not of a dangerous character. We do not think it would have been either prudent or just to have made the parties implicated in it responsible by a criminal prosecution, and we regard it as a mere political demonstration, quite distinct and separated from the displays which are intended as offensive to the Roman Catholic inhabitants of Dungannon; and, on the whole, we report to your Excellency that all the charges in this paragraph of the memorial, so far as they impute misconduct or partiality against the magistrates, are unfounded in fact and disproved.

With reference to the fourth paragraph of the memorial—

"That this party afterwards marched into the town of Dungannon, beating drums and firing shots, until encountered by an opposite party at a place called Moon's Corner, where stones were thrown from both sides, windows broken, and one magistrate wounded; and that all this occurred in the presence of two magistrates—Colonel the Honorable Stewart Knox, M.P., and Mr. Newton—one sub-inspector, and at least twelve policemen, who also had arrived on the scene; yet no arrests were made, nor prosecutions followed this fearful outrage, though many, composing both mobs, must have been known to both magistrates and police."

Bernard Kelly, Ev.
p. 83.

Joseph M'Mullen,
Ev. p. 103.

We have to report to your Excellency there was no evidence as to firing of shots beyond that referred to in the preceding paragraph of our report; and although two witnesses stated that they heard the sound of bullets or shot, we are, without at all impugning their intending veracity, not disposed to rely on their accuracy. Beyond their belief that balls were fired, there is nothing to corroborate the statement; no one was wounded—there was no mark on the trees among which the balls were alleged to have struck, and we are inclined to believe that those shots were fired in blank, from mere wantonness and bravado, and no complaint was made to the police or magistrates that bullets or shot were used. The two magistrates mentioned, the Honorable Stuart Knox and Mr. Newton, being in the vicinity, were sent for when the effigy party were seen approaching the town; they hastened to the place at once, and with very commendable zeal actively exerted themselves to quell the disturbance which had just commenced in the town between the rival parties. Mr. Newton was struck by a stone flung by some one in the crowd. He was not seriously injured, and represented the matter as trivial. It is quite true that no names of the parties so engaged were taken, no summonses issued, and, as far as we could ascertain, no serious efforts were made to identify anyone. Had this occurrence arisen out of a purely drumming demonstration, organized for the mere purpose of offence, irritation, and defiance, as they (upon uncontradicted testimony) usually are, we would not hesitate to express our deliberate condemnation of the authorities—the magistrates present, and the police, in not having adopted sufficient measures to secure the identification of the guilty parties; but it is impossible fairly so to regard it. It was a casual, as distinguished from a periodical and chronic manifestation, and it was a matter entirely for the discretion of the local authorities to consider what it was best to do in the public interests. The disturbance was quelled—no person was, so to speak, injured—two or three panes of glass were broken—it provoked no permanent ill-will; the affair was over in a quarter of an hour, and not renewed, and under these circumstances we cannot regard the conduct of the magistracy on this occasion as deserving of censure. We think they acted manifestly in the public interest, and with a view to the prevention of that animosity and ill-feeling which were likely to be engendered, had prosecutions been instituted against any of the persons collected to express disapproval of the success of Mr. Dowse, while those who rejoiced in it were unmolested, allowed to assemble, and burn tar barrels, as a means of expressing their satisfaction upon his success.

See Ev. Courtney
Newton, p. 124.

Colonel Knox, p.
182.

Courtney Newton,
p. 137.

We have thus gone paragraph by paragraph through the charges contained in the Memorial, and as may be gathered from the opinions expressed by us with respect to them, we have great satisfaction in reporting for the information of Your Excellency, that we see no reason or grounds whatever for imputing partiality or prejudice to the magistracy of the Petty Sessions of Dungannon in the discharge of their duty. No instance—no evidence of partisanship or partiality upon their part was laid before us; and although we called for any instance of unfairness or bias, no act or fact was adduced to support any charge of the kind as regards the magistrates now holding the commission of the peace, and acting in the district referred to.

One transaction was brought under our notice, which it is our duty to refer to for the

information of Your Excellency, but which leaves unaffected the foregoing statement of the conclusion we have arrived at, so far as the present bench of justices are concerned. We were at first unwilling to investigate it, as the magistrates sought to be implicated were both dead, and no member of the present bench was mixed up in the matter. We were, however, pressed on the part of the Memorialists to inquire into it, and having regard to the general nature of the charges in the Memorial, and their not being limited in time, we considered it more advisable to do so. The facts, so far as we could ascertain them, were as follow.

On the 12th of July, 1865, a small drumming party passed through the town, playing after the usual fashion, on their way to join a large body, who from various localities were concentrating upon a place called Castlecaulfield. This small party were intercepted in the town, and after some scuffling, were compelled to leave their drums and fifes in the custody of neutral parties, and thus deprived of their insignia they were permitted to proceed to join their friends. There does not seem to have been violence of any extent. There were no personal injuries inflicted, and so this matter, which occurred early in the morning, passed off.

See Ev. Rev. Patk. Quinn, pp. 38, 39.

At about 3 o'clock, P.M., on the same day, a band of over 2,000 men, armed with bludgeons, scythes, hayforks, guns, and other weapons, and wearing the usual insignia of Orangemen, rushed into the town, broke the ranks of a police force of about thirty men, drawn up to prevent their passage, swept all opposition before them, and disregarded and disobeyed, with expressions of contempt, the advice, remonstrances, and commands of the magistrates then present, Messrs. Coulson, R.M., and Brooke.

See Ev. Sub-Inspector Smith, pp. 166, 167.

They committed grievous acts of violence, fired shots, broke windows, attacked houses, violently assailed the magistrates and police, and according to the evidence behaved with great turbulence and ferocity. Eighteen of this party were identified, and subsequently returned for trial to the then next spring assizes. They all pleaded guilty and were let out on their own recognizances to come up for judgment when called on, and to keep the peace.

Sub-Inspector Smith, 5082-5088.

While the feeling produced by this incursion upon the town was at its full height, on the 7th of August following, about 9 o'clock in the evening, the report of firearms was heard, and immediately after a body of about 300 to 400 Orangemen were observed marching upon the lower part of the town. They were beating drums and playing fifes in the usual style; many of them were armed with various weapons. The alarm was immediate and great, and numbers of the Roman Catholic inhabitants took steps to protect themselves and their property from an attack by this riotous party, which they then believed to be imminent. Some barricaded their houses, while others tore up the pavement of the streets for the purpose partly of raising partial barricades, and partly to provide themselves with weapons to oppose the advance of the Orangemen. The police then in the town, about ten in number, got between the opposing parties and endeavoured to prevent them from coming together. The Orangemen continued at the lower part of the town firing shots and behaving in a most turbulent manner for a considerable period, and with the object, we have no doubt, of trying to provoke the Roman Catholic party to come down and fight them. That party were prevented partly by the police, and partly by the exertions of some of their respectable fellow citizens from moving from their own locality.

Sub-Inspector Smith, 5097-5125.

Mr. Brooke, a magistrate of the Dungannon bench—now, unhappily dead—was in the town and present. The Orangemen finally took up their station upon Windmill-hill, within gunshot of the town. They remained for some time and then disappeared, or, at least, were not heard firing or drumming after about an hour had elapsed. The alarm in the town then began to subside. The orderly and well-conducted townsmen retired within their homes, but a portion of the people still remained in the streets, some of them firing shots by way of bravado or defiance, or to show they were prepared for defence. The names of some of these latter were taken by the police, and they were summoned. Mr. Brooke is alleged to have directed this course to be adopted, assigning as a reason that the Orangemen had been summoned for the occurrence of the 12th July, and that the other party should be summoned for the occurrence of the 7th August. These parties were brought before Mr. Coulson, R.M., next day. Informations were taken against eighteen of them, and returned to the next spring assizes, when they also pleaded guilty, and were allowed out on their own recognizances, to come up for judgment when called on, and to keep the peace. While a large number of the Roman Catholic party were identified and prosecuted for their conduct on this night, not one of the Orange party, who were beyond all doubt the aggressors, was identified or prosecuted.

Sub-Inspector Smith, 5109.

As might naturally be anticipated, this apparently one-sided proceeding created the most intense feeling of dissatisfaction and distrust among the Roman Catholics, who insisted that this conduct exhibited partisanship and partiality on the part of the magistrate

who allowed the raiders of the 7th August to go free, while he directed those who assembled to defend life and property on the same night to be prosecuted.

It is plain to our judgment that, if the transaction be as represented, it is one to be deeply regretted and much to be condemned, as calculated to shake confidence in the pure and impartial application of the law, and we have satisfaction in calling your Excellency's attention to the opinion of the present magistrates, who, when examined before us, each stated that if the facts were such as represented above, the proceeding deserved to be strongly condemned. While entirely subscribing to this opinion and fully adopting it, we must observe, and we took occasion so to express ourselves when the matter was under inquiry, that it was most unfortunate that the occurrence was not at the time, by memorial or otherwise, brought under the attention of the Executive; that now, after the lapse of nearly six years, the investigation of it must be unsatisfactory and incomplete; and that it would be most unfair to assume that explanations could not be given which would deprive the transaction of the unjust and partial character ascribed to it were the magistrates, now dead, and who then took part in it, forthcoming to explain their acts and conduct. We therefore withhold the expression of any opinion condemnatory of gentlemen who are now unable to defend their acts or explain their motives. We think, however, a public benefit has resulted by the expression of magisterial opinion on a subject upon which manifestly a deeply-rooted feeling of dissatisfaction had hitherto rested.

Having now adverted to and expressed our united opinion upon the foregoing matters in detail, we think it right further to apprise your Excellency that in our opinion the feeling and influence which has hitherto prevented the organization of counter-demonstrations by the Roman Catholic party in Dungannon, if the present condition of things remain unaltered, cannot and will not be maintained for any considerable time, and that if such counter demonstrations be organized, there will be constant and serious conflicts and danger to the public peace.

We have further to call your Excellency's earnest attention to that portion of the evidence in the appendix which suggests the expediency of appointing resident magistrates to co-operate with the local justices, in every locality, where from circumstances such as those mentioned with reference to Dungannon, there is no gentleman in the commission of the peace of the same religious communion as that of any large number of the population found within the district.

The constant and latterly increasing displays of these drumming parties, the ineffectual efforts to cope with them, and the fact which has been proved and not disputed, that these exhibitions occur under the eye of the police, and with the knowledge of the local magistracy, together with the fact that until the appointment of Captain Ball, R.M., in April, 1869, no magistrate other than one of the Protestant religion was appointed to the commission of the peace for the district, undoubtedly engendered a feeling of jealousy and distrust among the Roman Catholic inhabitants of Dungannon against the bench of magistrates there presiding in all cases where party questions or supposed religious interests were involved. This was the unanimous testimony of the Roman Catholic witnesses, and that the feeling existed we have no doubt. The magistrates all stated that the Roman Catholic witnesses examined before us were orderly, well-conducted, respectable men, who were incapable of untruly stating their feelings on this point. It is gratifying to add, that while those witnesses energetically and persistently deposed to the absence they felt of all confidence in the bench in party cases, they expressed unlimited trust in the honour, impartiality, and justice of the magistracy in all other questions, and under all other circumstances.

We have, in addition, to report to your Excellency that in considering the question as to the manner in which the law had been administered by the magistrates of the petty sessions district of Dungannon, we were necessarily obliged to inquire into the constitution of that body, with a view of considering in what manner the confidence of the Roman Catholic inhabitants in that tribunal could be secured with respect to the hearing of cases of a party or religious nature. No member of that bench is a Roman Catholic, and we therefore thought it our duty to inquire whether there were not in the town or neighbourhood some gentlemen of that religious persuasion, qualified to be appointed to the magisterial bench. We regret to be obliged to inform your Excellency that the Roman Catholic witnesses all agreed that not one of their co-religionists was so qualified. They at the same time expressed their desire and wish that the determination of all such cases should rest with a resident magistrate, and the majority of them stated that it was immaterial in their opinion what his religion might be. We think it our duty to call your Excellency's attention to this matter, and to suggest that as long as the present state of things continues in the Dungannon district, it will be most desirable with a view of restoring confidence in that bench amongst the Roman Catholic inhabitants, that a resident magistrate should be constantly there.

See Ev. Col. Knox,
Nos. 5660-5663.

Charles Stanley,
4282-4284.

Thomas Hamilton,
4392, 4393.

See Ev., pp. 148,
149.

See Ev. Nos. 1592
-1596, 1700-1704,
1787-1883.

We ought perhaps in strictness to close our report to your Excellency at this stage, but having regard to the evidence given before us, and the importance of that evidence with respect to the future peace and well-being of the town of Dungannon, and the administration of the law in the locality, we trust your Excellency will not consider that we are going beyond the proper limits of the matters referred to us for investigation by your Excellency's warrant in stating the following matters for your consideration :—

We have already called your Excellency's attention to the demonstrations which take place annually on the 1st and 12th July, and which on many occasions have led to the lamentable results we have mentioned above. The magistrates and authorities can, however, take proper precautions for putting the law in motion for the purpose of preventing, as far as possible, these offensive demonstrations in the town or neighbourhood of Dungannon; and we have no doubt that the existing law, if honestly and properly put in force, is amply sufficient to suppress and put them down. They are, and are well known to be, most offensive to the Roman Catholics of Dungannon; are intended by the one party as a direct challenge to armed combat, and so received by the other. They have already led to serious breaches of the peace, and must lead, we fear, to even worse, if not terminated by authority. Counter demonstrations have actually been organized in parts of the county Tyrone, and they have been in contemplation amongst some of the Roman Catholics of Dungannon, but have not up to the present been organized by them, in the belief that the law of the land is sufficient to put them down, and the hope and expectation that the law will be put in force for that purpose; and also, because they have been dissuaded from taking any such steps by influential members of their own persuasion, under the assurance that they would receive redress from such a grievance by the action of the authorities in seeing the law properly enforced.

See Ev. County-Inspector Heard, Nos. 762-771.

We have now, however, to call your Excellency's attention to other demonstrations of a similarly offensive character, which are far more difficult to deal with effectually under the existing law. It appears that drumming parties, consisting usually of from twenty to thirty persons, are continually in the habit, and frequently as often as three times a week, of playing in and at the outskirts of the town of Dungannon. They are composed principally of young persons. They generally play in the evenings or at night, but not on any fixed or stated occasions; and sometimes a month will elapse without their being heard at all. They have increased considerably within the last few years, and are regarded by the Roman Catholic party in the same light as the larger demonstrations on the 1st and 12th July. These parties take care not to bring themselves within the provisions of the "Party Processions Act," and it is very difficult for the police authorities to act with respect to them in the same vigilant manner that they can do with respect to the larger demonstrations, or to make them amenable under any existing law. All persons examined before us, including all the magistrates and the police authorities, agreed, however, as to their offensive and irritating character, and the danger to the public peace of Dungannon in the future if some steps were not taken for their suppression. Nearly all the magistrates suggested that it would be most desirable, and likely to contribute to the peace and well-being of the district if a summary jurisdiction was given to them to deal with offences of this nature with a maximum and minimum punishment by fine or imprisonment. This suggestion was acquiesced in and adopted by other witnesses, including some of the police authorities, and one and all appeared to agree in thinking that if the magistrates were given such a power these demonstrations could and would be effectually dealt with. We hope we are not going beyond our duty in saying, that after giving this matter our most anxious consideration, we have come to the conclusion and consider it would be most conducive to the peace of the town and neighbourhood of Dungannon, and be a principal means of putting an end to these most offensive and dangerous demonstrations, if such a summary jurisdiction were given to the magistrates, and we most respectfully and earnestly recommend it for your Excellency's consideration. We would, however, also recommend, that if such a power be given it should be subject to an appeal to the Chairman of Quarter Sessions, and that the magistrates should not take any part in the hearing of the appeal in the appellate tribunal. When making these suggestions for your Excellency's consideration, we do not mean to confine them to the demonstrations which take place at Dungannon alone, or to suggest that it would be desirable or advantageous to have any special law for that district. The evidence before us was unanimously to the effect that all out-door demonstrations of a character offensive to others ought to be put a stop to in every locality; and we were gratified to find that all the Roman Catholics examined expressed it to be their anxious wish and desire that in all parts of Ireland, as well as in their own neighbourhood, all offensive party and religious out-door demonstrations of every kind should be suppressed. Entertaining, as we do, views completely in accordance with this evidence, we venture respectfully to suggest them for your Excellency's consideration.

See Ev. Col. Knox, 5619, 5620.

Courtney Newton, 4149-4434.

Charles Stanley, 4319-4327.

Alex. M. Lyle, 4607-4609, 4800.

Col. Knox, 5665-5667, 5705-5708.

In conclusion, we must notice what we deem to be a plain misconception of the law as it at present exists, which seems to have prevailed among some of, if not all, the magisterial bench of Dungannon. They appear to have thought, that although satisfied that the assemblage of a drumming party in the town or its immediate vicinity was calculated to produce not only animosity and ill-feeling among a portion of the inhabitants, but also calculated to lead to actual collision and breach of the peace, the law was powerless and incapable of operation or application until an actual conflict of opposing parties had commenced. We thought it our duty to state that this view of the law was erroneous, and feel satisfied that the magistrates who entertained this feeling cannot be any longer under any misapprehension on the matter, or as to the powers within their reach for preventing or suppressing demonstrations of this character, especially those, the intention to hold which is previously well known. All which we submit and certify as our Report.

We have the honour to be,

Your Excellency's obedient humble servants,

WM. A. EXHAM,

JAS. CHAS. COFFEY.

DUBLIN, 13th November, 1871.

LETTER from the UNDER SECRETARY to the LORD CHANCELLOR.

21,525.

DUBLIN CASTLE,
13th December, 1871.

My LORD,—I am directed by the Lord Lieutenant to transmit herewith a copy of the Report of the Commissioners appointed in August last to inquire into certain charges preferred against the Magistrates of the Dungannon District; and I am to request that your Lordship will be good enough to favour me, for His Excellency's information, with your opinion thereon.

I have the honour to be, my Lord, your obedient servant,
T. H. BURKE.

The Right Honorable the Lord Chancellor, Four Courts.

The LORD CHANCELLOR'S REPLY.

LORD CHANCELLOR'S SECRETARY'S OFFICE,
FOUR COURTS, DUBLIN.

31st January, 1872.

SIR,—I am directed to acknowledge your letter, conveying to the Lord Chancellor the desire of His Excellency the Lord Lieutenant that His Lordship should state to you, for His Excellency's information, his opinion upon the Report of Messrs. Exham and Coffey, the Commissioners of Inquiry on the charges made by Alexander Ball, Esquire, against the Magistracy of Dungannon, and also on the charges against the Magistrates, contained in a memorial addressed to His Excellency by certain Roman Catholic inhabitants of Dungannon.

The Lord Chancellor directs me to say, that he has read that Report and the voluminous evidence on which it is founded. He highly appreciates the ability and impartiality which it displays; and, adopting generally its conclusions as correct, and its recommendations as judicious, he does not think it necessary to trouble His Excellency with any detailed observations upon them.

I am to say, however, that, on the two main branches of the Inquiry, the Commissioners appear to the Lord Chancellor to have been quite warranted, after a long and searching investigation, in the view they have adopted as to the statements of Mr. Ball and the specific charges against the magistrates.

His Lordship observes that Mr. Ball withdrew imputations which were hastily and improvidently made; and he concurs with the Commissioners in their expression of regret that a gentleman, of such experience and of so high a character, should have been, from any cause, betrayed into the utterance of them.

As to the second branch of the Inquiry, the Commissioners appear to His Lordship to have sedulously considered the evidence on either side; and His Lordship concurs with the judgment they have so clearly pronounced upon it.

This being so, the Lord Chancellor would not trouble His Excellency with any other remarks; but that there are two matters discussed in the Report which are of great general importance, and to which he would invite careful consideration.

The first is, the public mischief which is caused in Dungannon and its neighbourhood, and through wide districts of the North of Ireland, by drumming parties, organized and conducted in such a way as to create annoyance and alarm, and to provoke violent opposition, counter-demonstrations, collisions between adverse crowds, and serious breaches of the public peace. His Lordship agrees with the Commissioners (Report, page 6) that the evidence on all sides

“establishes conclusively the fact that drumming and marching are meant as a challenge by the Orange party, and are regarded and received as such by the Roman Catholics.”

And he would call special attention to their statement, that

“the feeling and influence which has hitherto prevented the organization of counter-demonstrations by the Roman Catholic party in Dungannon, if the present condition of things remain unaltered, cannot and will not be maintained for any considerable time, and that if such counter-demonstrations be organized, there will be constant and serious conflicts and danger to the public peace.”

The witnesses produced before the Commissioners concur in condemning these insensate and mischievous proceedings. The magistrates of Dungannon, influential from their position and intelligence, and the Roman Catholics who gave evidence, and who are described by those gentlemen as “orderly, well-conducted, respectable men,” all express the same disapproval of them, and the same apprehensions of danger

and disaster, if they be not put an end to. This matter, therefore, requires the vigilant attention of the Executive Government; and the suggestion of the Commissioners, approved by all the magistrates, that there should be an extension of summary jurisdiction, for the purpose of preventing and punishing such deplorable misconduct, seems to the Lord Chancellor very worthy of the consideration of the Legislature.

The second matter to which the Lord Chancellor would respectfully invite His Excellency's notice is stated thus in the Report, page 10 :—

"We have, in addition, to report to your Excellency that in considering the question as to the manner in which the law has been administered by the magistrates of the Petty Sessions District of Dungannon, we were necessarily obliged to inquire into the constitution of that body, with a view of considering in what manner the confidence of the Roman Catholic inhabitants in that tribunal could be secured with respect to the hearing of cases of a party or religious nature. No member of that bench is a Roman Catholic, and we therefore thought it our duty to inquire whether there were not in the town or neighbourhood some gentleman of that religious persuasion, qualified to be appointed to the magisterial bench. We regret to be obliged to inform your Excellency that the Roman Catholic witnesses all agreed that not one of their co-religionists was so qualified. They at the same time expressed their desire and wish that the determination of all such cases should rest with a resident magistrate, and the majority of them stated that it was immaterial in their opinion what his religion might be. We think it our duty to call your Excellency's attention to this matter, and to suggest that as long as the present state of things continues in the Dungannon district, it will be most desirable, with a view of restoring confidence in that Bench amongst the Roman Catholic inhabitants, that a resident magistrate should be constantly there."

This seems to his Lordship a very important statement in connexion with that which precedes it, and from which it would appear that whilst the Roman Catholic witnesses

"expressed unlimited confidence in the honour, impartiality, and justice of the magistrates on all other questions, and under all other circumstances they energetically and persistently deposed to the absence they felt of all confidence in the Bench in party cases."

And the Commissioners attribute that absence of confidence to

"the increase of the drumming parties, the ineffectual efforts to cope with them, the fact which has been proved and not disputed that these exhibitions occur under the eyes of the police and with the knowledge of the local magistracy, together with the fact that until the appointment of Captain Ball, R.M., in April, 1869, no magistrate other than one of the Protestant religion was appointed to the Commission of the Peace for the district."

I am further to say, that, unfortunately, there are other places, especially in the North of Ireland, in which there is no representation, or a very inadequate representation, of Catholics, and in some cases of Presbyterians, amongst the local magistracy. The social circumstances of the country make this sometimes inevitable, from the want in certain districts, as in Dungannon, of gentlemen of these religious denominations qualified by station, occupation and property to take their places on the Bench; and the result, not unnaturally, is the creation, more or less, of that "distrust" which the Commissioners describe as affecting the trial of party questions, even by persons in whose honour, impartiality and justice on all other occasions the people implicitly rely. Wherever it is fairly possible to prevent that unhappy result, and take from the local tribunals the appearance of sectarian exclusiveness, by the appointment to the Commission of fit and competent magistrates, in whom all the members of the community can place reliance, the Lord Chancellor thinks that appointment should undoubtedly take place; and, in other circumstances, the suggestion of the Commissioners as to the resident magistracy, which has, he believes, in many instances, been already anticipated by the action of the Executive, appears to him worthy of most favourable consideration.

The Lord Chancellor does not think there is anything else in connexion with the Report as to which he should offer any observations to His Excellency.

I am only to add, that the state of the law, as it affects party demonstrations, was largely considered by the late Lord Chancellor, Mr. Brewster, in a letter to the Magistrates of Donoghmore, which was frequently the subject of allusion in the course of the recent inquiry; and a very clear statement, as to the duties of Magistrates in such matters, appears to have been made by Mr. Coffey. The circumstances of the present case do not, in His Lordship's opinion, require or warrant any legal exposition of a similar kind in this communication; but he thinks it right to express, *quantum valeat*, his full concurrence with the legal views of the late Lord Chancellor, and Mr. Coffey.

Submitting these brief observations to His Excellency, the Lord Chancellor desires me to conclude by expressing his hope that the investigation at Dungannon, conducted, as it appears to him to have been, with all the ability and fairness which are conspicuous in the Report of the Commissioners, may be of public service in correcting errors, softening down asperities, and harmonizing hostile classes, not in Dungannon only, but also in other portions of the kingdom.

I have the honour to be, Sir, your obedient Servant,

THOMAS UPINGTON.

The Under-Secretary, Dublin Castle.

MINUTES OF EVIDENCE.

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DUNGANNON INQUIRY COMMISSION, 1871.

MINUTES OF EVIDENCE.

FIRST DAY.

DUNGANNON, WEDNESDAY, AUGUST 16, 1871.

WILLIAM ALLEN EXHAM, Esq., Q.C., and JAMES CHARLES COFFEY, Esq., Q.C., the Commissioners,
sat at 12 o'clock, in the Court-house, Dungannon.

FIRST DAY.

August 16.

Mr. *Peter Flanagan*, Clerk to the Commissioners, opened the proceedings by reading the warrant for holding the inquiry, as follows :—

“By the Lord Lieutenant-General and General Governor of Ireland.

“Whereas, it has been notified to us that at a court of inquiry, held on the 20th day of June, 1871, and following days, at Dungannon, in the County of Tyrone, by A. S. Waters and J. Donovan, esquires, County Inspectors, respectively, of the Royal Irish Constabulary force, duly nominated and appointed to inquire, pursuant to the statute in that behalf, into the truth of certain complaints of neglect and violation of duty preferred by John Lynch, constable of the said force, against Thomas Smyth, esq., Sub-Inspector of the said force, Alexander Ball, esq., Resident Magistrate, having been duly summoned, was examined and gave evidence as a witness before the said court of inquiry; and whereas Colonel the Honorable Wm. Stuart Knox, M.P., Alexander Mackenzie Lyle, Charles Stanley, Armytage Lenox Nicholson, Courtenay Newton, Thomas Hamilton, Ynyr Henry Burges, and James Greer Richardson, esqrs., Justices of the Peace for the said county, and acting as such justices in and for the petty sessions district of Dungannon, have complained that certain charges were made by the said Alexander Ball, in and by his said evidence, which affect the personal honour of the magistracy and the administration of justice in the said locality, and have demanded a public inquiry into the conduct of said magistracy in relation to the said charges.

“And whereas, divers of the inhabitants of the said locality have presented their memorial to us, praying that an inquiry might be had into the manner in which the law has been administered in the said locality, in reference to the proceedings of certain parties alleged by the said memorialists to have created animosity and endangered the public peace, and to have committed breaches of the peace in the said locality.

“Now we do nominate and appoint you, William Allen Exham and James Charles Coffey, esqrs., two of Her Majesty's counsel, to be Commissioners to investigate and inquire into the several matters aforesaid, and for that purpose to hold an inquiry at the court-house of Dungannon aforesaid, on Wednesday, the 16th day of August instant, and thereafter so long as may be necessary in that behalf, and, in order thereto, to examine on oath all such persons as may be produced before you in reference to the matters so to be investigated and inquired into, and to report to us thereon.

“And for so doing this shall be your warrant.

“Given at Her Majesty's Castle of Dublin this Tenth day of August, 1871.

“By his Excellency's command,

“THOS. H. BURKE.”

Mr. Commissioner EXHAM.—The warrant that has just been read explains what we have been directed to do by His Excellency the Lord Lieutenant. We received this warrant, I think, on the 12th, and on that day we endeavoured in the best manner we could to give publicity as to the day on which we intended to hold this inquiry. We hope, and have every reason to believe, that ample notice has been given, so that everyone interested in it will probably be prepared to go on with the inquiry to-day. We communicated with Captain Ball, who is one of the parties men-

tioned in this warrant; with the magistrates, and also with, I think, the first three or four parties whose names are subscribed to the memorial alluded to in His Excellency's warrant. It will be perceived, of course, that there are two subjects of inquiry. One is with regard to the evidence that it is stated was given by Captain Ball in the inquiry which I believe was held in this court-house in the course of the present year. The magistrates of this district feeling, as they say, their personal honour and the administration of justice affected by that evidence, have called for this inquiry, which His Excellency has been pleased to grant. I believe the magistrates are in possession of the evidence so given; at least we have reason to know that that evidence was substantially set forth in the newspaper which was forwarded by the magistrates to His Excellency the Lord Lieutenant. The second branch of this inquiry is with regard to certain complaints and charges made in the memorial sent to His Excellency by certain inhabitants of this district. I believe the magistrates have been furnished with a copy of that memorial, so that, so far as the information stated in that memorial is concerned, they are aware of the matters that are the subject of investigation, so far as the parties who are the memorialists are concerned. There are certain witnesses whose attendance we can procure; that is, if there be any official persons whom any of the parties think it desirable to have examined here, upon their names being given to our officer, we will take care that their attendance shall be procured. With regard to any other witnesses over whom we may not have control, on their names being furnished to our clerk by any of the persons who think it right to examine them, we shall issue summonses requiring the attendance of those parties for examination. Any public documents connected with this matter I believe have been furnished to us. I am glad to see some of our professional friends present, which induces me to think that the parties interested in this inquiry will be most ably represented; and I am sure that everything that can be done to facilitate the inquiry, and to have a full investigation into the entire of the facts, will be done.

Mr. Sergeant *Armstrong*.—As to the course of proceeding of the Commissioners, I wish to know whether it is their intention to call on my friend who, I understand, appears for the accusing parties here to make a statement opening his subject-matter of complaint. I may observe that the memorial presented by what are called the Catholic inhabitants of this town is very general in its nature, and perfectly unlimited in its area of investigation. They assign no dates, but complain of imperfect administration of justice by the local magistrates for several years back. A charge of the sort of course it is utterly impossible to grapple with in any reasonable way. As to the allegations made by Captain Ball on oath on the 23rd of June, they are equally remarkable for the absence of anything specific; and in analogy to all other cases

Mr. Commissioner Exham.

FIRST DAY.
August 16.

in which persons are expected to defend themselves against accusations, I would apply to you to require particulars in writing to be furnished of the matters to be relied on, unless upon the opening statement of my friend Mr. McLaughlin—than whom no man is more competent to make it—I shall be able to collect what the specific charges are. It appears to me that this application is reasonable. It will tend to the despatch of business, and prevent you from being, two or three days hence, surprised by inquiries not opened and not contemplated by the parties.

Mr. Commissioner COFFEY.—You appear, Sergeant, for the magistrates?

Sergeant *Armstrong*.—I am for the local magistrates, who are the accused parties here, and who have nothing to say until they hear something alleged against them.

Mr. Commissioner EXHAM.—For whom do you appear, Mr. McLaughlin?

Mr. *McLaughlin*.—I appear for the memorialists. I have no concern with Captain Ball.

Mr. Commissioner EXHAM.—I see Mr. Barry here.

Mr. *Barry*.—I appear to watch the proceedings on the part of Captain Ball, whose statement is before the Court.

Mr. Sergeant *Armstrong*.—As to watching proceedings on the part of Captain Ball, if that is the position that my learned friend means to assume, I feel it to be my duty to call attention to the facts connected with the original allegations of Captain Ball, which unquestionably led to the memorial, which I believe never would have been heard of or dreamt of by any man in the town but in aid of Captain Ball. The idea of now permitting him to appear here in the secondary light of watching proceedings and listening to allegations, sought to be substantiated, which he was the first and only man to make on his oath, appears to me to be a most extraordinary movement. It will be necessary, therefore, to know explicitly whether Captain Ball retires from those charges or perseveres in them. If he perseveres in them the idea of his sitting to watch the proceedings is irrelevant. If he does not persevere in them I shall know how to deal with the case.

Mr. Commissioner COFFEY.—It occurs to me, Sergeant Armstrong, that your application is, at present, a little premature, because it may be altogether unnecessary to press it. If opening statements are made they will afford you a sufficient opportunity of knowing what the exact gist of the inquiry will be; and again, it is to be observed that Captain Ball, so far as he is concerned, is not bringing the magistrates here, but the magistrates are bringing him here.

Mr. Sergeant *Armstrong*.—It is necessary to open the correspondence with the Executive in order to show you that he has initiated the whole of the matter; and I don't expect that Captain Ball, in the able hands in which he now finds himself, being well advised, will either hesitate to repudiate these allegations of his or avow them and adhere to them.

Mr. Commissioner COFFEY.—So far as the magistrates are concerned they are one of the moving parties here.

Mr. Sergeant *Armstrong*.—That is perfectly true. That is a matter of form, seeing that though we are parties interested in the inquiry, we are to all intents and purposes defendants in that inquiry; and I think I am entitled to know, and the magistrates are entitled to know, on the very threshold of these proceedings, whether Captain Ball, who has pledged himself on oath to the opinion that the local magistrates have been guilty of partisanship and maladministration of justice, appears here now to maintain those charges or whether he abandons them. Everybody knows that this memorial was got up, or at least promoted on the day after these charges were made, and because the local magistrates met to take counsel amongst themselves as to the course they should pursue in consequence of these charges being made in open court; and now to find the memorialists say that they will take the lead is rather astonishing.

Mr. *McLaughlin*.—I think there is a great deal of common sense in the law as laid down by Mr. Commissioner Coffey, and that the application which has been made is a little premature. I represent the memorialists, and I deny that the memorial had anything whatever to do with any anticipated conduct on the part of my friend the Sergeant. I am not concerned for Captain Ball—he is in much abler hands—nor do I mean to be; but I represent the memorialists, and the charges contained in the memorial, which are very short and very easily understood, I mean to sustain in evidence, and I don't intend to make speeches at all. The Sergeant has been kind enough to refer for a precedent to the analogy of the course of proceedings adopted at other inquiries. We have all had the advantage—with the exception perhaps of Mr. Commissioner Coffey—of being connected with the Belfast and the Derry inquiries. I had the honour of being myself in Derry before Mr. Commissioner Exham, and so was Sergeant Armstrong, all through the trying period of the Belfast inquiry. I have gone through the whole of the reports, and I observed two things in these proceedings; first, that no one made any opening statement, as at Nisi Prius; and secondly, that no one was called on for a bill of particulars. In illustration of the first point I found an observation of Mr. Commissioner Barry, the present Attorney-General, at page 7, according to my recollection, of the Belfast report. He says there that the object is not to conduct the proceedings by a technical hard-and-fast rule, but to have all the information that is available offered to the Commissioners. What I respectively suggest as the proper course of proceeding here is to follow the course of proceeding adopted in the cases of Belfast and Derry; and the best proof of the necessity of so doing is to be found in this. Until I heard this document (the warrant) read by the Secretary—I never got a copy of it—my information in reference to it was altogether contained in the abstract of it given in the *Gazette* notice. I decline to give the bill of particulars that the Sergeant requests. The memorial is very short, and the reading of it perhaps may explain it better than any abstract that I could make of it. The memorialists say that for a great number of years they have been kept in constant alarm and terror by drumming parties, which have so often as three times a-week beaten and played into the town of Dungannon, creating animosity and endangering the public peace. I intend to prove that by evidence of the facts. I ask the attention of the Commissioners to the impossibility, by reason of the very words of the charge, of giving a bill of particulars. What we complain of here is acts of omission on the part of the magistrates in not doing what they should have done with reference to these parties which, three times a-week during a series of years, have been beating drums through the town and endangering the public peace. No one at Nisi Prius would be called on to give a bill of particulars there. The next charge mainly has reference to breaches of the peace and the destruction of property by drumming parties. It goes on to state that on a late occasion windows were smashed in the Catholic chapel, and in the house of a man whose wife was in labour, to the great danger of her life, for which grievous offences against the law no person was made amenable. If these things were within the knowledge of the local magistrates, where were they on the occasion? And if they did not know anything about them, they admit the case against themselves, for they should have known about them. One local magistrate, Mr. Stanley, the memorial states, when the breaking of the chapel window was mentioned to the Bench, declared publicly that he would have nothing to do with any such investigation, as he considered it a "trivial" offence. Can Mr. Stanley, and Sergeant Armstrong representing him, say that they do not know what is the charge against him as regards that, or whether he said that the breaking of the chapel window was a trivial offence or not? Next, it is stated in the memorial "that on another occasion, just outside the town of Dungannon,

several hundred Orangemen, with drums and firearms, met for the purpose of burning in effigy Mr. Dowse, a native of Dungannon, and at present Her Majesty's Solicitor-General for Ireland; firing shots for more than one hour; yet no police were sent to take their arms or watch their movements.

Sergeant *Armstrong*.—Their "names," not their "arms."

Mr. *M'Laughlin*.—Thank you, Sergeant.

Sergeant *Armstrong*.—They are not supposed to have had any arms.

Mr. *M'Laughlin*.—Not supposed to have had arms? The Sergeant, while putting me right, has fallen into the sin of omission, by not reading what is stated in the second line of the memorial, namely, that "on another occasion, outside the town of Dungannon, several hundred orangemen, with drums and firearms, met for the purpose of—" so and so. That balances the account. The memorial goes on to say, "that this party afterwards marched into the town of Dungannon, beating drums and firing shots, until they were encountered by an opposite party at a place called 'Moon's Corner,' where stones were thrown from both sides, windows broken, and one magistrate wounded: that all this occurred in the presence of two magistrates, Colonel the Honorable Stuart Knox, M.P., and Mr. Newton, one sub-inspector, and at least twelve policemen, who also arrived on the scene." There is no man who was there—Colonel Knox, Mr. Newton, or the sub-inspector and the twelve policemen—who does not know what took place, if anything did take place, that night; for, as I take it, Her Majesty's Solicitor-General was only burned once; "yet no arrests were made." The memorial says—"Nor did prosecutions follow this fearful outrage, though many, comprising both mobs, must have been known to both magistrates and police." If anyone wants a bill of particulars for that he will get it in the evidence, and not sooner. "That from the foregoing facts"—the memorial states—"as well as many others, your memorialists believe that both local magistrates and police authorities here took no effective means to stop proceedings so offensive to us, the memorialists, and dangerous to the peace of the locality. Memorialists, therefore, pray that your Excellency will order a commission of inquiry into the manner—"—and this is the part of the memorial embodied in the short abstract published in the *Gazette* notice, and there can be nothing more general in form and more wide than the scope it embraces—"in which the law has been enforced and administered in this town and neighbourhood for several years past. For which your memorialists, as in duty bound, will ever pray." Now, gentlemen, I respectfully submit that from the very nature of the case, and having regard to the precedents created in the Belfast case and the Derry case, I should not be called on for a bill of particulars; and that, in reference to continuous affairs like those, we could not give a bill of particulars. If any unfairness resulted to the opposite side, I trust that I would have too great a sense of what is right to object to anything requested by my friend Sergeant Armstrong; but it is utterly impossible to do it; and no evil result can follow for this reason:—This inquiry cannot be over to-day. The question whether it can even practically begin to-day, having reference to some documents that I want, and to other matters of a preliminary nature, has yet to be decided. I see the entire of the magistrates of the district here, all on active service; I see the sub-inspector here, too, and the idea of their not knowing matters that were strictly and officially within their cognizance is not a thing to be listened to. Accordingly, before the Sergeant favours me with a reply, I shall make an observation as to some things that we want. First, with all respect, we want a copy of that document.

Mr. Commissioner COFFEY.—Which document?

Mr. *M'Laughlin*.—The document read by the registrar.

Mr. Commissioner COFFEY.—You mean the warrant?

Mr. *M'Laughlin*.—If you please; for I intend to guide myself in this inquiry by what is laid down in that document, and, therefore, I cannot do without a copy of it. I am not concerned for Captain Ball. If I were, I should point out the language of that document, assuming that what is contained in the *Gazette* notice fairly—as I am sure it does—represents the substance of the very peculiar reference to Captain Ball. It is only so far as Captain Ball's conduct bears on the interests of the memorialists that I am concerned with it; and, according to my recollection of what is contained in the *Gazette* notice, it runs in this way. The Commissioners are to investigate and inquire into certain charges and allegations alleged to have been made by Alexander Ball, Resident Magistrate, of and concerning the administration of the law in the district of Dungannon; and secondly—to inquire concerning the complaint of the magistrates against the said Alexander Ball in respect thereto. That seems to make our position, with reference to Captain Ball, a very peculiar one; for it is now stated that originally Captain Ball made some allegations, and that the magistrates made direct charges against him. But I have nothing to do with that, except so far as it bears on the interests of the memorialists.

Mr. Commissioner COFFEY.—Mr. *M'Laughlin*, allow me to interrupt you for a moment. The warrant is very clear and precise. It states that certain allegations were alleged to have been made upon oath by Captain Ball. It states that the magistrates complained of these allegations as affecting their personal honour; and it calls upon us to inquire into the circumstances. Of course what Sergeant Armstrong throws out is perfectly correct. It is within the discretion of Captain Ball and his advisers to say what they please as to that; but the magistrates bring Captain Ball here to make him account for the language that it is said he used upon oath.

Mr. *M'Laughlin*.—That is so, and allow me to say that I am much obliged to you. Until I heard it read I never knew that the warrant contained anything about what this gentleman had sworn on oath. I am only concerned with him from the memorialists' point of view, and I never knew anything about the magistrates complaining about their personal honour being offended or aspersed; therefore I could not go on without knowing what are the charges springing out of the complaint of the magistrates. There are several other matters of a practical nature that I should have to apply to the Court about; for instance, Mr. Exham has thrown out that we are to have the attendance of any official persons whose evidence may be required. We intend to give you a list of the names of those whom we want to summons, and also a list of witnesses of an official character. I assume that Captain Ball will be present. I don't know officially whether he will or not. I assume that Sub-Inspector Smith, with the police whom I see here, will also be present; and the county-inspector also, I apprehend, will turn up during the course of this inquiry.

Mr. Commissioner COFFEY.—Any persons connected with the matter, who have official positions, will be completely within the control of the Court.

Mr. *M'Laughlin*.—It may tend to facilitate you if I occupy your time for some few minutes more. The Sergeant has referred to the correspondence which took place between Captain Ball and the Castle, and the magistrates and the Castle, as being within the scope of this inquiry. I have not the advantage of knowing what that correspondence is. One of the matters comprehended within the sphere of my preliminary application was, that we should get copies of the charges made by the magistrates against Captain Ball, not with reference to the defence of the magistrates on the attack of the magistrates, on the defence of Captain Ball on the attack on Captain Ball, but to see the extent to which they applied, with reference to the same transactions, to the charges made by the memorialists.

Mr. Commissioner EXHAM.—With regard to that, the way the matter stands is this. The evidence of

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Captain Ball was reported in the public newspapers, or in one of them—the *Northern Star*, I believe—and the government also got a transcript of the shorthand-writer's note of the evidence. The magistrates thereupon sent up a copy of the newspaper to the Castle, pointing out certain answers given by Captain Ball in that inquiry; and they stated that the charges contained in those answers were "groundless and untrue"—those are their very words—and they called for an investigation, in order that Captain Ball might have an opportunity of proving those charges if he could, and that they might have an opportunity of defending themselves. Therefore we must take that, as far as Captain Ball is concerned, I would say, with the words of the warrant here, the words of the warrant being, that we "are to inquire into certain charges made by Captain Alexander Ball, which the magistrates allege affect their personal honour." There is no doubt in the world—in fact any person of common sense would understand—that Captain Ball's evidence, if correct, must reflect very seriously on the personal honour of the magistrates, and on the administration of justice.

Mr. *McLaughlin*.—Certainly.

Mr. Commissioner EXHAM.—We have come here to try if these matters exist in fact which so affect the personal honour of the magistrates; and what my friend and I, who have had the advantage of seeing all these documents before, have come to a conclusion about, is, that in the first instance, in the order of time, and of priority of complaint made to the Castle authorities, this question between Captain Ball and the magistrates should first be inquired into. What may come out on that inquiry may be most important for the memorialists to consider when we come to consider the questions involved in their memorial; but, in point of priority of investigation, what we think is, that we ought to know from Captain Ball and his counsel, Mr. Barry, what course they intend to take in this inquiry, because we cannot help seeing that, though the magistrates have called for an investigation, they are not called on in the first instance to prove a negative. We should like, therefore, to know, in the first instance, what course Mr. Barry on the part of Captain Ball proposes to take.

Mr. Commissioner COFFEY.—We are bound, too, to have it clearly understood that the memorialists stand here in an independent position, as making independent charges totally unconnected with Captain Ball and the magistrates.

Mr. *McLaughlin*.—Certainly.

Mr. Commissioner COFFEY.—They have not introduced Captain Ball into it. They have made special allegations and charges against the magistrates of this district, and these must stand or fall by the evidence that they themselves produce.

Mr. Commissioner EXHAM.—And they must be investigated thoroughly.

Mr. *McLaughlin*.—And will be, as far as I am concerned. I need not repeat again what has been so well expressed by Mr. Commissioner Coffey, namely, that we are independent altogether of Captain Ball here; but, with reference to my request for a copy of the proceedings in which Captain Ball is said to have given certain evidence, Mr. Commissioner Exham has, as I understand, referred to the newspaper.

Sergeant *Armstrong*.—I suppose my learned friend has read it three or four times; if not he shall have a copy of it.

Mr. Commissioner EXHAM.—The copy sent by the magistrates to the Castle has been furnished to us along with other documents. That is all I know about it.

Mr. *McLaughlin*.—I spent so much time in reading newspapers when I was young that I have not read them lately. What I want to say is this—I gather from Mr. Commissioner Exham's words that which I would have presumed if there had been no express statement on the subject, namely, that there was an official record of what was sworn by Captain Ball on that occasion. I think it right in the interest of my

clients to ask for that official record; for, with reference to the newspaper reports, I know this much, that in the case of two newspapers published in the same town, and published, strange to say, in the interests of the same party, a grave and serious difference existed on the subject, amounting to a positive contradiction between them. That being so, I could understand that if there had been no official record we would be concluded as to the statement contained in the newspaper selected by the magistrates and sent in; but under the circumstances, I think the first thing to go into is the official record of what took place, so far as the interests of my clients are concerned. Captain Ball and his counsel may take any course they like, but I think it desirable to refer to that record, and, therefore, I should like to have a copy of the official shorthand-writer's notes.

Mr. Commissioner EXHAM.—That was an inquiry entirely into the conduct of Mr. Smith, and the principal portion—nine-tenths or more—of the evidence given by Captain Ball on that occasion related to Mr. Smith. There were just two or three answers given at that inquiry which relate to the magistrates at all; and those answers relate to the charges which are the foundation of this inquiry, the magistrates having complained of the introduction of their names by Captain Ball on that occasion.

Mr. *McLaughlin*.—Just so; but inasmuch as the conduct of the police, which was the issue there, had reference to those local disturbances, of which my clients in their memorial now complain, it is fairly within the *ambit* of the present inquiry. Allow me to refer you to the concluding paragraphs of the memorial:—"Yet no arrests were made nor prosecutions followed this fearful outrage, though many composing both mobs must have been known to both magistrates and police;" and then in the last paragraph they say:—"Memorialists therefore pray that your Excellency will order a commission of inquiry into the manner in which the law has been enforced and administered in this town and neighbourhood for several years past." I apprehend that that creates a necessity for my getting an official copy of what took place on that occasion when Captain Ball gave this alleged information.

Mr. Commissioner COFFEY.—Really the matter is not worth discussing, and for this reason, that if the present inquiry should become one between Captain Ball and the magistrates, with respect to this alleged statement that he made, unquestionably the shorthand-writer's notes will be produced to authenticate what was said, and enable us to form a judgment on the subject, and then you will have the advantage of seeing the document; but, supposing that that element did not exist, I would be against supplying you with a copy of those shorthand notes, because it would form no part of our inquiry. The copy of that shorthand-writer's notes would, in that case, form no part of your case or of the matters that we are called on to investigate by your memorial. You must stand or fall by independent evidence within your power to produce, and which ought to have been in existence before you presented that memorial.

Mr. *McLaughlin*.—No doubt it was; but would you not say that the copy of those notes would be very material nevertheless. Suppose certain transactions take place between A, B, and C, and that with reference to these transactions certain witnesses, namely, the police on one side and Captain Ball on the other, gave evidence before a commission of inquiry, and that the shorthand-writer's notes of that evidence are in court, would it not be most material that I should have a copy of them?—Of course if I am refused them I must do without them.

Mr. Commissioner COFFEY.—I refuse you in point of form, because I don't think you can mix up your case with the case between the magistrates and Captain Ball; but while I do so I am conscious at the same time that they will be available for you if the investigation goes on between Captain Ball and the magistrates.

Mr. *M'Laughlin*.—I am sorry to take up your time.

Mr. Commissioner COFFEY.—No, not at all; don't make any apology whatever, Mr. *M'Laughlin*.

Mr. *M'Laughlin*.—But I do believe that this preliminary discussion will save time, and enable us to get properly on the rails in a systematic way. Mr. Commissioner EXHAM has been good enough to say that counsel representing Captain Ball should go on with his case in the first instance, as being first in the order of time, and as it might guide the course of the inquiry. I don't know whether I was right or not, but I advised Captain Ball to come here in September, 1869,——

Sergeant *Armstrong*.—Would not my learned friend think it reasonable to leave Captain Ball to his own counsel? He is not Captain Ball's counsel yet, but still it looks very like as if he was.

Mr. *M'Laughlin*.—It is great simplicity on the part of the Sergeant to think that, but if he had allowed me to complete the sentence I would have demonstrated that I was not falling into the mistake that he imputed to me. The order of time is the natural order of the proceedings here. I referred to the time that Captain Ball should have come here in order to show that part of the subject-matter of which the memorialists complain goes back to 1865. Surely, that is before 1869; and for that reason I referred to Captain Ball, of whom I now wash my hands.

Sergeant *Armstrong*.—Say what part of the memorial goes back to 1865?

Mr. *M'Laughlin*.—I will, with pleasure:—"That for a great number of years we have been kept in constant alarm and terror by drumming parties, which have, so often as three times a-week, beaten and played into the town of Dungannon, creating animosity and endangering the public peace. That on many occasions breaches of the peace and destruction of property have been committed by those drumming parties"——

Sergeant *Armstrong*.—I could not catch that date in the whole memorial.

Mr. *M'Laughlin*.—That refers to the riots of 1865, which were the subject of inquiry at the succeeding assizes of 1866, at Omagh. The next passages of the memorial refers to the destruction of the windows of the chapel in 1869, and to the transaction of the burning of the effigy of the Solicitor-General, who is very well able to take care of himself, and which occurred in 1869 also. That is all I have to say on the subject.

Sergeant *Armstrong*.—I don't complain of my learned friend pressing the Commissioners at such length. I agree with him that a little preliminary discussion is likely to lead the Court to a unanimous conclusion as to the line of procedure to be adopted. I think when my learned friend hears a few observations from me he will see the reasonableness of my requiring particulars. The inconvenience of a court so constituted as this is, that there is no antagonist to come before you at either side, that there is no record of a judicial kind which can be properly placed before you with respect to which the usual line of legal procedure could be adopted; therefore, I think it is reasonable as regards my friend, with a view to the branch of the case which he is conducting, that he should hear from me (I venture to think he will concur in the reasonableness of this) the circumstances under which the complaint against Captain Ball was made by the local magistrates, and how it came to pass that the Commissioners are now appointed by His Excellency to sit here at all. Really this is a case that requires clearness, lucidity, and an understanding of the circumstances from the very beginning, and I think it would assist both the Commissioners and all others interested in the inquiry if they bear with me a little while I just explain how it is that it comes that you are sitting there at all. A commission of inquiry on something in its nature of a constabulary inquiry was held with respect to Sub-Inspector Smith in June last in this town, and on that inquiry Captain Ball was examined. Captain Ball had been a resident magistrate here since the autumn of

1869, and only since that time. It was never known until he announced his opinion of his brother magistrates that he entertained the views which he then, I have no doubt, felt it his duty to express on oath. He had confined them to himself; but on that occasion he did make allegations against the magistrates which led to a representation to the Lord Lieutenant, or rather to the Lord Chancellor in the first instance—for the magistrates, being under the impression that the Chancellor was the functionary with whom it rested to issue a commission of this sort, applied in the first instance to his lordship. They were informed by him through his secretary, that the authority to issue such a commission as this did not rest with any person save His Excellency the Lord Lieutenant; and accordingly it is not necessary to trouble you with the preliminary correspondence which resulted in the application to the head of the Executive. I find that the memorial from the people of this town is dated the 23rd of June, 1871. The names of the persons who signed it we have never to the present moment known—a piece of information which it was very natural to ask for, but which was refused by His Excellency. I have not the slightest hesitation in saying that that is not the accurate date of the memorial, and that it never would have been dreamt of or heard of but in sustinment of the propositions announced by Captain Ball. That, however, is a matter which will transpire on evidence. On the 19th of July, 1871, the magistrates received from the Under-Secretary the following letter:—

"Dublin Castle, 19th July, 1871.

"GENTLEMEN,—I am directed by the Lords Justices to transmit herewith, for your information, copy of a memorial from the Roman Catholic clergy and other inhabitants of the town and neighbourhood, relative to annoyances caused by drumming parties; and I have to request that you will favour me with any observations which you may think fit to make thereon for their Excellencies information.

"I am, gentlemen, your obedient servant,

"T. H. BURKE.

"The Magistrates at Petty Sessions,
"Dungannon."

On the 21st July—two days afterwards—Mr. Alexander Mackenzie Lyle, who was, I believe, the senior magistrate, but who, at all events, was deputed by the rest to do so, sent this reply to that communication:—

"Donaghmore House, County Tyrone,
"July 21, 1871.

"SIR,—Your communication of the 19th instant, enclosing copy of a memorial from inhabitants of Dungannon, has been forwarded to me as senior of the magistrates of the Dungannon district at present in the neighbourhood. From attendance at the assizes of Tyrone and Donegal, I find it will be a few days before we can have a meeting of magistrates to consider the memorial; but, in the interim, I request, on behalf of the magistrates, that the names affixed to the memorial be furnished, as it is reasonable that we should be informed who are our accusers. We, therefore, hope that the Lords Justices will direct these names to be forwarded for our information and guidance.

"I am, sir, your obedient servant,

"A. MACKENZIE LYLE."

Mr. Burke's original suggestion to the magistrates having been to the effect that if they had any observations to offer on the memorial they should make them, the following reply was sent by the magistrates:—

"Dungannon, 25th July, 1871.

"SIR,—We beg to acknowledge receipt of your letter of the 19th July, enclosing copy of a memorial from the Roman Catholic clergy and other inhabitants of the town and neighbourhood of Dungannon, and requesting us to forward to you our observations thereon. The magistrates regret that the names of the parties who signed the memorial were not appended thereto, and they submit to the Lords Justices that they were in fairness entitled to have the names of their accusers, instead of being compelled to answer what (so far as they are concerned) is an anonymous production. The magistrates feel it impossible to defend themselves against the vague charges preferred in the first paragraph, in the absence of statements of time or other facts to enable them to ascertain the specific occur-

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reences alluded to; but they, however, observe that the allegation that 'drumming parties have so often as three times a-week beaten and played in the streets of Dungannon,' is a great exaggeration. There is no doubt that such parties have been frequent in the neighbourhood, coming within a short distance of the town, seldom entering it, and then only the outskirts. These parties did not play party tunes, wear emblems, carry flags, or do anything, which, in the opinion of the magistrates, was contrary to the Party Processions Act; and where no breach of the peace arose therefrom, the magistrates failed in discovering any law which would justify them in sending them for trial in a criminal court.

I take the liberty of saying that the magistrates were perfectly right in that view of the law, and I am prepared to state what the law is at the proper time.

"It is manifest that unless a mob of the opposite party assembled with the sole object of attacking the drumming party, and proceeded to execute their intention, no breach of the peace would occur; and if the drumming party were not an illegal assembly up to the point of their being attacked by another mob, how could the magistrates send them for trial, even if an information were sworn that if an attack upon them were made a riot would ensue. Since 3rd September, 1869, Captain Ball has been resident magistrate in Dungannon. It was quite in his power, if he believed those drumming parties were guilty of an indictable offence, to have taken informations and sent them for trial to the assizes. The local magistrates have never been aware that he did so on any occasion. Whenever any case was brought before the magistrates, which appeared to be a breach of the Party Processions Act, or where there was, in their judgment, an unlawful assembly, or if a disturbance of the peace took place, they have unhesitatingly sent the guilty parties for trial before the proper tribunal. The magistrates do not believe that on many occasions (within any reasonable period) breaches of the peace and destruction of property have been committed by those drumming parties; and they assert such facts were not brought before them without their taking steps to have the offenders dealt with. With regard to the occasion on which the windows of the Roman Catholic chapel, and a pane of glass in the house of a man whose wife was in labour, were broken, the memorialists state that for these grievous offences against the law no person was made amenable. The facts are as follows:—It is true that a drumming party or parties came into the town of Dungannon on the 23rd of April, 1869, and passed through several streets. A pane of glass was broken in the window of a man named Houston, whose wife was ill, probably from a stone thrown by some person of the party, or at the party from the other side of the street. On going home the drumming party passed the Roman Catholic chapel, and it was given in evidence that they had got a considerable way outside the town at the time some panes of glass in a window of the chapel were broken. A report was made by the police to one of the magistrates next morning, who ordered summonses to be issued against any person who could be identified as belonging to this party. Summonses were issued on the following day against the only three persons who could be identified, requiring them to appear at petty sessions on Monday, the 26th of April, and likewise against several witnesses (civilians) who were supposed to be able to give evidence in the case. On that day application was made by the attorney for the accused for a postponement of the case until the next petty sessions day on account of the absence of material witnesses, and the late service of the summonses. This application was acceded to by the magistrates, and the case came on generally on the 10th of May, when the Sessional Crown Solicitor for the County of Tyrone attended to prosecute for the police, and the accused were defended by one or two attorneys. The charge entered against them in the petty sessions book is, 'That defendants, with others, in the town of Dungannon, did unlawfully assemble and commit a breach of the Party Processions Act on the 23rd April, 1869. The newspapers of the day stated the charge to be that of an unlawful assembly. Mr. Molony, the then resident magistrate, attended specially, and took down fully the evidence of all the witnesses as they were examined, to the number of six, and after the depositions of all the witnesses were sworn to, signed and completed, the magistrates retired to their room for the purpose of considering their decision. A difference of opinion then arose as to whether there was sufficient evidence of an unlawful assembly to send any of the parties forward for trial; and the magistrates came unanimously to the conclusion that the safe course for them to take would be for the resident magistrate to forward the depositions to the Castle, and obtain the opinion of the Law Adviser of the Government thereon. This result was

announced in the court, and on the 24th of May the law adviser's opinion having arrived, the purport of it was announced from the bench, to the effect that there was no indictable offence disclosed in the depositions, and that therefore the case must be dismissed. The magistrates beg to observe that if, pursuant to their request, they had obtained from the Lords Justices the names of the memorialists, they believed they could have asserted that several of the memorialists took an active part in the entire proceedings in this case, instructed the prosecuting attorneys, and were perfectly well aware of the details hereinbefore given; and, in fact, as the magistrates believe, the person who got up this memorial was present the whole time. The magistrates further observe that the depositions so submitted to the law adviser clearly disclosed the fact of the presence of at least one of the accused among the drumming party, and as belonging to it, although not proved to be present at the time any windows were broken; and, therefore, if belonging to the drumming party is an indictable offence, the magistrates consider the law officers of the Crown would have so explicitly advised them. With reference to the observation attributed to Mr. Stanley in the memorial, the magistrates state that two of their number present at the time at once protested against the use of these words as expressing their views of the transaction. Mr. Stanley, now present, desires to say that the question under discussion when he used the words was, whether or not, after the case being adjourned, there should not be a private investigation, for the purpose of seeking for further evidence to bring home the charges to either the accused or any other party, that he considered such a step would raise the thing to disproportionate importance, and he only meant by saying that it was a trivial offence, that it was one that should be dealt with in the usual way. With regard to another occasion, memorialists state 'that outside the town of Dungannon several hundred Orangemen, with drums and firearms, met for the purpose of burning an effigy of Mr. Dowse, a native of Dungannon.' The magistrates believe the facts to be these:—On Monday, 9th February, 1869, the news of some success of Mr. Dowse in Londonderry reached the town of Dungannon, and the Roman Catholic mob made this a pretext for a political demonstration; and, as reported in the *Northern Star* of the following day, 'immense bonfires were lighted in the various streets of Dungannon, and though rejoicings on a large scale and of a general character were then indulged in, there was not the slightest appearance of party feeling exhibited, with the exception that Colonel Knox, M.P., and Mr. Morell (meaning the Rev. C. L. Morell, then Moderator of the General Assembly) were groaned.' The magistrates believe that so far as words go, there were words used which were much more offensive to the opposite party than drumming along the road without playing party tunes; and they also believe, if the opposite party had attacked the mob at the bonfires, a breach of the peace would certainly have resulted; but the opposite party did not attack them, allowing their political demonstration full swing. On the 19th of the same month a number of people, designated in the memorial as Orangemen, for a counter-demonstration, and with drums, proceeded to a hill close outside the town of Dungannon, lit bonfires there, and some say they burnt the effigy of Mr. Dowse. The *Northern Star*, before alluded to, describes it thus:—'On Friday evening at about eight o'clock a number of those reliable for office business or effect at any time, marched out of the town in the direction of Killyman, for the purpose evidently of beating up recruits . . . but in this they signally failed . . . They, nevertheless, did not desist from their purpose, and would have tried to burn Dowse in Market-square, but that our gallant member (Colonel Knox, M.P.), feeling the danger of such an attempt, dissuaded them. They therefore went on an adjacent hill, passing through the streets in the suburbs, shouting party cries, beating drums, and firing shots.' The reporter continues:—'I cannot exactly say if they did burn the effigy of Mr. Dowse. They lit a large bonfire and drummed round it about two hours . . . but hundreds of shots were fired on their return up Scotch-street . . . Some 300, with drums, firing shots, and yelling, produced the greatest possible terror, and, judging from former experience that the town would be wrecked, the greatest consternation prevailed, and arrangements were hurriedly made to resist any attack on the town. At Moon's Hotel a collision took place, &c.' The magistrates state that the road from this Windmill-hill over the railway bridge, into the town, passes at a considerably lower level than a place called the Fowl-market, which latter is protected by walls some four feet high; that the party coming in from the hill were attacked by the Roman Catholic mob assembled in the fowl-market, from whence a large quantity of stones were thrown against the drumming

party beneath, who, however, passed on and got out of the town by a side street. The magistrates observed, too, that in this locality few of the Roman Catholic inhabitants reside. It is a considerable way from that inhabited by the lower class of Roman Catholics; therefore, in the statement of the *Star*, above extracted, where it would imply that the Roman Catholic mob assembled for their own defence, the suggestion is erroneous; for not only were they assembled for attack in a part of the town where none of them reside, but they were on the side of the street where there is no house except the residence of a Presbyterian minister, and a Presbyterian church, which are about 250 yards from the streets which are looked upon as mainly inhabited by the lower classes of Roman Catholics. The magistrates received no information that any considerable hurt was done to anybody, notwithstanding all the noise made.

"The Honorable Stuart Knox and C. Newton, two magistrates referred to in the memorial, for themselves, wish to observe that the latter was dining with Colonel Knox on the evening in question; that a policeman came to Dunganon Park announcing that there was danger of a row in the town, upon which, immediately, Colonel Knox, a cousin of his another Colonel Knox, and Mr. Newton, proceeded into the town, and passed from Market-square down the hill to the lower part of Scotch-street, from whence proceeded a great noise. They ordered the police to follow as fast as possible. They went on before the police, hoping that their presence might assist in preventing a collision. They had arrived at 'Moon's Corner' when the drumming party advanced up the hill towards where they were, and stones were rapidly flying from both sides. Mr. Newton received a blow of a stone in the leg, of no great consequence, and some panes of glass were broken in Mr. Moon's house—a Protestant hotel-keeper—but it was impossible to see from whom these stones proceeded. It was not deemed prudent to arrest any of the mob on either side, considering it best to compel the drumming party to return home by a side street, instead of through the centre of the town, in which they succeeded, and in a very short time the town was in peace. There is no doubt that there was no one prosecuted for this occurrence. The magistrates consider that it is a gross exaggeration to use, with regard to it, the language of the memorial, that it was a 'fearful outrage,' though a ridiculous exhibition of party feeling on both sides, which for a time menaced the peace of the town. Neither Colonel Knox nor Mr. Newton knew any of the parties, nor could they in the darkness identify any individual who was engaged in the demonstration.

"The magistrates are strongly of opinion, from circumstances which have come within their knowledge, that the memorial was principally got up by the person who wrote the article in the *Northern Star*, to which allusion has been made; but having no opportunity of seeing the names of memorialists they cannot with confidence assert this as a fact. They believe the memorial was signed on Sunday, the 25th June, after service in the Roman Catholic chapel of Dunganon, though probably prepared the day before. They call attention to the fact that upon Friday, the 23rd of that month, Captain Ball, R.M., of Dunganon, made charges against the local magistrates of partisanship with the drumming parties, and partiality in the administration of justice. On the next day (Saturday) there was a meeting of magistrates in the town for the purpose of conferring on the subject of the necessary forces required for the preservation of the peace during the July anniversaries, at which Captain Ball and the County Inspector were present. After the business was concluded, the subject of Captain Ball's evidence on the previous day was introduced, whereupon Captain Ball left the room, and the course to be taken by the magistrates implicated was then discussed; and they decided upon an application for an inquiry into their conduct, which was that day despatched to the Lord Chancellor. The magistrates believe that this memorial was got up solely for the purpose of backing up Captain Ball's evidence, and of meeting the inquiry anticipated from the magistrates' application, and they consider themselves justified in making this assertion, as they are strongly of opinion that it was concocted by a publican in Dunganon of the name of Hayden, who alone of all its inhabitants joined Captain Ball in the charges he made at the police investigation, and who is the acknowledged correspondent of the *Northern Star*, and took an active part in the investigation against Sub-Inspector Smith. It is also believed that some, if not many, of those who signed the memorial were induced to join in it from the evidence of Captain Ball at the above-named investigation, in which he made the charges against the magistrates.

"The magistrates call attention to the fact that the occurrences referred to in the memorial took place in February, 1869, and that complaints in regard to them are only brought forward when Messrs. Ball and Hayden chose to make the charges, at a police investigation on the 23rd June, 1871.

"In conclusion, the magistrates submit to the Lords Justices that the foregoing statement completely exculpates them from the charges made or suggested by the memorial. If, however, their lordships think otherwise, the magistrates respectfully demand a public investigation, so that either through the Government, or through the means of that investigation, their conduct may be set right before the public, and in such case they request that their lordships will procure from the memorialists a detailed statement of the several circumstances alluded to in the memorial, of which no particulars are given, and supply same to the magistrates in order that they may prepare for their defence.

"On behalf of myself and my brother magistrates,

"I have the honour to be, sir,

"Your obedient servant,

"STUART KNOX.

"To the Under-Secretary, the Castle, Dublin."

I think that was a very reasonable suggestion. However, there appears to be anomalies connected with the constitution of these extraordinary courts, and I don't blame the Executive for not requiring it, but now that we are before the Commissioners we come to demand it, and with great respect I think we are entitled to have it. Well, on the 24th of June, the magistrates wrote to the Lord Chancellor—these charges having been made by Captain Ball on the 23rd, to the infinite surprise of his colleagues, most unquestionably—they wrote the following letter:—

"24th June, 1871.

"MY LORD,—We, magistrates of the Dunganon district, having read the report of the evidence of Captain Boyle, R.M. (at an investigation now being holden in Dunganon, on charges made against Sub-Inspector Smith), in which he deposes that he considered there was partiality shown by the magistrates and constabulary in certain party cases referred to in the previous evidence; and the general scope of which evidence is a recapitulation of the same charges, we enclose a copy of the *Northern Star* of this date, containing a full report of the evidence.

"Feeling that these charges are of so grave a character, and affect not only our personal honour but also the administration of justice in this locality, we therefore respectfully and firmly demand that your lordship will direct some eminent barrister to hold an inquiry into the conduct of the magistrates, and that Captain Ball be directed to furnish to us a detailed statement of the facts on which he relies to substantiate the serious charges he has made.

"We have the honour to remain, your lordship's obedient servants,

"A. MACKENZIE LYLE, J.P.

"C. STANLEY, J.P.

"THOS. HAMILTON, J.P.

"YNYR H. BURGESS, J.P.

"A. L. NICHOLSON, J.P.

"COURTENAY NEWTON, J.P.

"JAS. G. RICHARDSON, J.P.

"The Right Hon. Lord O'Hagan, Lord Chancellor of Ireland."

The full report of the evidence was appended, and my learned friend will find that there is no material discrepancy between the report in the *Northern Star* and the report furnished to the Government. The magistrates in that letter ask that Captain Ball should be directed to furnish "a detailed statement of the facts on which he relies to substantiate the serious charges he has made," yet we are now told Captain Ball only comes here to "watch the proceedings." The reply to the letter of the 24th of June was the statement that the application for an inquiry should be made to the Executive. The letter of the magistrates covered the extract from the *Northern Star*, giving Captain Ball's evidence. It is part of the proceedings, and I will read it:—

"THE COURT resumed the hearing of this case at ten o'clock this morning. Mr. M'Mordie (Belfast) again attended to watch the case for the complainant.

"Captain A. F. BALL, R.M., examined.

"How long have you been stationed here?—Since September twelvemonth.

"Is Mr. Ball aware that there is an Orange party in this district?—Yes.

"Have you ever had reason to complain of their conduct?—I have never complained, but I had reason to find fault with drumming parties as disagreeable to the Roman Catholic people, and calculated to lead to a breach of the peace.

FIRST DAY.

August 16.

FIRST DAY.

August 16.

"Are you of opinion that these drumming parties are violations of the law?—I am. They are a violation of the common statute law, and I do not refer specifically to the Party Processions Act.

"Are they of frequent occurrence in this district?—They are.

"Would you consider it your duty to prosecute these parties?—If they were brought before me on summons, and informations granted in the cases being sufficiently substantiated, I would return them for trial.

"Have you received from the constabulary authorities here all reasonable assistance in carrying out your views in this matter?—I don't consider that I have, nor in carrying out prosecutions; and, I may add, with what were the explicit directions of the magistrates.

"Can you refer to any particular occasion on which the constabulary authorities did not protect the peace of the locality?—Yes; on the evening of the 24th February last. I was at dinner in my lodgings in Perry-street, and heard drums playing for from twenty minutes to half an hour. I should say they were playing in the immediate vicinity of Perry-street. The party drew nearer, coming up the street at a very slow pace, and stopped opposite my lodging, and remained there two or three minutes playing very vigorously. They then walked away slowly.

"Was that intended to insult you?—I consider so. I have no doubt of it. Such a thing could not have occurred if the police duties had been efficiently discharged.

"Can you give any reason as to why the police did not interfere?—It is my opinion that, as they were an Orange party, they were not to be interfered with. The day following the occurrence a sub-constable in this town came into my lodgings with summonses to be signed, and I asked him were any of the constables out the previous evening with a view to take down the names of any of the drumming party. He said they were not, and he said further, 'It would be very little use if we were out, because, upon occasions when we have attempted to take the names of some of those parties, they have turned upon us and said, "If you attempt to take any of our names, we shall report you to Mr. Smith." That is all that occurred then.

"Mr. *Donovan* said, as a member of the Court, that that was not legal evidence, as the accused was not present at the conversation.

"The *PRESIDENT* said the sub-constable should be produced.

"Mr. *Smith* objected to the evidence *in toto*.

"The *PRESIDENT*.—It is down now.

"Examination resumed.

"Have you reason to believe that Mr. *Smith* has sympathies with the Orange party?—Undoubtedly.

"Does the knowledge of this fact account for the frequency of the drumming parties?—It does; and that sympathy prevents these parties being caught.

"Is Mr. *Smith* in any way embarrassed in the discharge of his duty by his social relations?—I consider that he is trammelled in the free and impartial discharge of his duty by his friendship with some of the neighbouring gentry and magistrates.

"Are the most of these gentry and magistrates generally believed to be members of, or sympathisers with, the Orange party?—They are generally considered to be sympathisers with that party.

"Have you had reason to find fault with partisanship in the constabulary prosecutions?—I consider there was partisanship exhibited in the administration of justice in regard to prosecutions in these cases.

"The *PRESIDENT*.—Do you refer to the constabulary?

"*Witness*.—The police were not administering justice.

"Was the friendship of Mr. *Smith* with the gentry and magistrates in any degree a cause of the partiality?—I consider it was.

"Have you reason to think that the Catholic people of Dungannon consider, and have reason to consider, that the constabulary act with partiality towards the Orange party?—Undoubtedly, in regard to these prosecutions.

"Do you think there is fair and reasonable ground for this third charge—that Mr. *Smith* is more inclined to please his connexions and that party than to assist his men in doing their duty?—I must say I do.

"Were strange constables, instead of men with local knowledge, sent to watch these drumming parties?—On one occasion to my knowledge it was so. The men sent were those who should not have been selected. One of them was here for a very short time—a few weeks—and another having been there for two or three months, not sufficiently long to know the people. I refer to the burial party at Killyman.

"Do you form any opinion at the time as to why these men were selected?—I thought it was not intended that the members of the party should be recognised.

"From evidence you have already given, do you think that an impartial resident magistrate can efficiently discharge his duty?

"Mr. *Donovan* said they were not trying the magistrates, but Mr. *Smith*.

"*Witness*.—Under the circumstances that I have already stated, I do not consider that I can carry out my duties efficiently with regard to those drumming parties.

"Cross-examined by Mr. *Smith*.

"You have brought those drumming parties under my notice on some occasions. Did I express my own feelings to you, and what were they?—I think you said the drumming parties were a great annoyance, and it was a pity they could not be put a stop to; still, I consider it was in your power, in a great measure, to put a stop to them. I accompanied you on one occasion to Milltown to meet one of these parties. There had been a tar-barrel set fire to.

"I will come to that by-and-by. What conversation had we on that occasion about these drumming parties?—I don't recollect. On some occasions I believe you said it was a pity we had not a law to put down such things, but that, in my recollection, occurred previous to the directions given by the magistrates as to these drumming parties.

"What occasion had they to give directions?—My having had occasion to apply to the Government to know what was to be done about these drumming parties. The Government sent me down an opinion of the law adviser, which it was advised should be read by the magistrates from the bench. This was done. I think I received that opinion about the month of March, 1870. Subsequent to that circular being read you brought up these Killyman parties on summons. I don't recollect any others. There were informations taken against the Killyman parties. These informations were submitted to the law adviser, and the reply given was that there was no case to send for trial. The case was on the 18th of April, and came before the magistrates on the 25th of April. I thought there was a case to go for trial, as far as I can recollect. You (Mr. *Smith*) prosecuted that case.

"Did I prosecute it properly?—I can't recollect now. I think you examined witnesses fully.

"Have you ever had reason to find fault with me for apathy for the way in which I conducted any case I ever prosecuted before you?—I don't now recollect any case in which you showed direct partiality in prosecuting, but I do consider that if, in the Killyman funeral case, proper measures had been taken with regard to identifying the parties concerned in it, that there must have been a conviction. I think the Killyman case occurred on Easter Monday. There were crowds of people here that day. You consulted me as to the necessity of having an extra force, and I think I said I did not think it necessary.

"The *PRESIDENT*.—I would like to keep to the barrack-room and not to the bench.

"Mr. *Ball*.—Unfortunately the two can't always be separated.

"Mr. *Smith*.—Did you ever know of me disobeying the magistrates?

"*Witness*.—Decidedly, in not having the drumming parties, or the prominent actors amongst them, summoned.

"Were there not drumming parties summoned, and what was the result?—I have told you before, some of the Killyman parties were summoned; but there were many cases in which no one was summoned. I don't think I complained to you about not having people summoned, as I considered it would be useless to do so.

"Why?—I considered there was partiality shown both by the magistrates and the constabulary.

"By constabulary do you mean me?—Most decidedly, as commanding the force in Dungannon.

"Did you report any neglect to Government?—I decline to answer that.

"The Court ruled that the question need not be answered or inserted on the minutes.

"Cross-examination resumed.

"Did you ever report to me that I neglected my duty?—Report to you.

"Well, complain to me?—No, except on one occasion, when I brought to your notice a certain occurrence in this town at the end of July last, and I was not at all satisfied with the part you took in that transaction. But I did not wish to lay the matter officially before the Government if I could avoid doing so.

"Did you consult the Government on that?—I decline to answer that.

"What was that thing you complained of?—My servant was beaten by a drumming party that he encountered in the town; he applied at this barrack for Mr. *Smith*; he also went twice to Mr. *Smith*'s house the same evening, with a view to have some steps taken with regard to these parties, and he failed in obtaining any satisfaction.

"Is this all of your own knowledge?—It was reported to me by my own servant.

"Didn't I report to you the misconduct of your servant on that occasion?—I have no recollection, until after I returned from Dublin, and I had written to you. I could not tell you the date of my return from Dublin, or learn, except I referred to my diary. You wrote to me a second time on the subject in answer to a letter of mine. The result of the correspondence was that I was satisfied with your explanation. That explanation referred to what had occurred in a conversation between us which bore on the testimony of my servant, but did not bear on the beating itself.

"Was that the first commencement of my sins on you?—

"The PRESIDENT.—That is not a proper question to put to the witness.

"Have I been respectful to you as a magistrate since you came here?—Yes, except with regard to one matter to which I do not wish to enter into more fully, but has been referred to.

"What reasons have you for stating your opinion that I sympathize with the Orangemen?—I think I have given one before.

"The PRESIDENT.—Indeed you have.

"Mr. Smith.—Upon what grounds have you formed the opinion that I sympathize with the magistrates and gentry?—I didn't say that.

"What makes you think that I am trammelled in my duty by my associations?—What I have heard from some of the leading magistrates in the town, and what I have always stated as to the marked manner in which the duty of the constabulary has been neglected with regard to the drumming parties.

"Who are my connexions in this town that I am more disposed to sympathize with?—I meant friends.

"Well, then, who are those friends?—I have already answered that.

"Mr. M'Mordie.—I object to this attempt to get out names. It was overruled before.

"Mr. Smith.—Do you charge me, Mr. Ball, with direct neglect of my duty on the occasion when the party played before my house?—I consider that you were responsible for the drumming party having come and played there; for I consider that if the police duties were efficiently carried out it could not have occurred.

"Are you aware that I prevented the men from doing their duties in connexion with drumming parties?—I can only infer that from what I have already stated in my direct examination.

"Were there other cases?—There were several; considering we had one or two drumming parties every week. The subject was only mentioned by Mr. Smith on, I think, two occasions."

That being forwarded, Mr. Uppington, the Secretary of the Lord Chancellor, informed the magistrates, as I stated, that it lay with the Lord Lieutenant to institute the inquiry, and ultimately, on the 4th of July, in consequence of that intimation, this letter was addressed to the Chief Secretary of His Excellency:—*

"Dungannon, 4th July, 1871.

"MY LORD,—We beg to enclose, for consideration of His Excellency the Lord Lieutenant, the copy of a letter addressed by us to the Lord Chancellor of Ireland on the 24th ult., in regard to evidence reported in the *Northern Star* newspaper of that morning, as given by Captain Ball, R.M., at a constabulary inquiry the previous day.

"We also enclose a copy of the *Northern Star* newspaper referred to, and of a letter received this morning from the Lord Chancellor's secretary.

"We call His Excellency's attention to the following extract from the evidence of Captain Ball:—

"Are the most of the gentry and magistrates generally believed to be members of, or sympathizers with, the Orange party?—They are generally considered to be sympathizers with that party. I consider there was partisanship exhibited in the administration of justice in regard to prosecutions in these cases. The President asked—Do you refer to the constabulary? Captain Ball replied—The police were not administering justice (clearly showing he referred to the magistrates). On cross-examination, Captain Ball replied to a question of Mr. Smith (the accused)—I don't think I complained to you about not having people summoned, as I considered it would be useless to do so. Why?—I considered there was partiality shown both by the magistrates and the constabulary. . . . Did you report any neglect to Government?—I decline to answer that."

"We submit to His Excellency that the extracts quoted, and the general scope of Captain Ball's evidence, affect the personal honour of the magistracy and the administration of

justice in this locality; and, coming from an official of the Government, we most respectfully request that His Excellency will direct Captain Ball to furnish to us the details and circumstances on which he relies to substantiate the serious charges he has made, and will direct a public inquiry into the conduct of the magistracy in relation to those charges.

"We beg to state that we are prepared to sustain the substantial accuracy of the report in the *Northern Star*, and we firmly assert that the statements of Captain Ball are groundless and untrue.—We have the honour to remain, your obedient servants,

"A. MACKENZIE LYLE, J.P.

"C. STANLEY, J.P.

"A. L. NICHOLSON, J.P.

"COURTENAY NEWTON, J.P.

"Two of the magistrates who signed the letter to the Lord Chancellor are unavoidably absent to-day, but they concur in the substance of this communication.

"The Most Hon. the Marquis of Hartington, M.P.,
Secretary of State for Ireland."

It was not convenient, I take it for granted, having regard to the state of public business—although these gentlemen felt very acutely being under the charges made by their colleague—to deal with the matter just then, and it was not until the 25th of July that the magistrates wrote a further letter, not having received any communication in the mean time.

The second letter was in these terms:—

"25th July, 1871.

"MY LORD,—I am directed to call your lordship's attention to our letter of 4th July, in which the magistrates of the Dungannon district requested that His Excellency would order that Captain Ball, R.M., should furnish them the details, circumstances, and facts on which he relied to substantiate serious charges made by him against them; and also direct a public inquiry into the conduct of the magistracy in relation to those charges.

"The magistrates feel that so serious an accusation made by a resident magistrate against the local magistracy should be founded on grave facts and well considered, for, if groundless, it affects the veracity of Captain Ball and his position as a resident magistrate; while, on the other hand, if well founded and true, it affects the character of the local magistrates and the administration of justice in this locality.

"I, therefore, respectfully request that His Excellency will comply with the request of the magistrates above-mentioned.

"I have the honour to be, your lordship's obedient servant,

"A. MACKENZIE LYLE, J.P.

"To the Most Hon. the Marquis of Hartington, M.P.,
Secretary of State for Ireland."

On the 31st of July that letter was replied to by Lord Hartington as follows:—

"Dublin Castle, 31st July, 1871.

"SIR,—I am directed by the Lord Lieutenant to acknowledge the receipt of your letters of the 21st and 25th inst., on the subject of the charges made against the magistrates of the Dungannon district; and I am desired by His Excellency to inform you that he does not consider it would be proper to call upon Captain Ball for any such statement as is referred to in your latter communication.

"His Excellency presumes that the persons who signed the memorial on the subject will offer evidence in support of the allegations contained in their memorial, and the justices will have an opportunity of meeting any case thus presented.

"With reference to the request contained in your letter of the 21st inst., that the magistrates should be furnished with the names of the memorialists, I am desired by His Excellency to state that he has been pleased to grant the commission of inquiry called for by the magistrates, and that the subject of that memorial will be included in that inquiry. The memorial will be transmitted to the commissioners, who will give due notice of the inquiry, and the application of the magistrates should be addressed to them."

I address it to you now—

Mr. Commissioner COFFEY.—What do you address to us?

Sergeant Armstrong.—An application for particu-

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lars. We are not to be kept here for a month perhaps on a wild chase after charges—

Mr. Commissioner COFFEY.—You wrote for the names of the memorialists.

Sergeant *Armstrong*.—We want the detailed circumstances and facts on which they rely. That is but common fairness and justice. You might go back for twenty years—

Mr. Commissioner COFFEY.—Certainly not.

Sergeant *Armstrong*.—Well, five or six years. But whatever is the limit of time, we ought to know on what they rely.

Mr. Commissioner EXHAM.—My friend and I have just written out what we think would be fair and right.

Sergeant *Armstrong*.—I am very anxious that you should allow me to finish this correspondence.

Mr. Commissioner EXHAM.—Very well.

Sergeant *Armstrong*.—I don't call on Captain Ball for details; I leave you to deal with his part of the case as you think fit. On the 3rd of August Mr. Lyle writes :—

“Donaghmore House, County Tyrone,
August 3, 1871.

“MY LORD,—I am directed by my brother magistrates to acknowledge the receipt of your letter of the 31st ult., received by me through yesterday's post.

“The magistrates request the Government will order that the commissioners named by His Excellency to hold the coming inquiry shall be furnished with the minutes of evidence taken before the County Inspectors on the inquiries against Sub-Inspector Smith and Head Constable Stewart, in the month of June last, at which the evidence of Captain Ball, R.M., was given, as the magistrates intend to rely upon, and use in their defence, the evidence and minutes then taken, and signed by the several witnesses.

“I have the honour to be, your obedient servant,
“A. MACKENZIE LYLE.

“The Marquis of Hartington, M.P., Chief Secretary,
“Dublin Castle.”

On the same day the following letter was written :—

“5, Seymour-street, Portman-square,
“London, August 3, 1871.

“MY LORD,—I beg to acknowledge your letter, in which you enclose a copy of a letter dated July 31, and addressed by you to Mr. Lyle.

“With reference to the first paragraph of that letter, in which your lordship states that His Excellency does not consider that it would be proper to call on Captain Ball for a statement of the grounds upon which the allegation was made by him when sworn at the late constabulary investigation, I beg to ask for information, with a view to avoid delay.

“I wish to know whether we, the accused, may assume that Captain Ball admits the accuracy of the report contained in the *Northern Star* which I handed to you with the other documents? I think it is important that we should be assured on this point, as otherwise it may be a necessary preliminary to the inquiry to verify the same on oath.

“This point being either acknowledged by Captain Ball, or established on oath by independent parties, I feel I am entitled to consider that Captain Ball will stand in the same category as our other accusers, with regard to whom, in the letter before alluded to, the following words occur :—

“His Excellency presumes that the persons who signed the memorial on the subject will offer evidence in support of the allegations contained in their memorial, and the justices will have an opportunity of meeting any case thus presented.”

“I am sure your lordship will understand that the reason I lay so much stress on this portion of the inquiry is that all concerned consider that the allegations in the memorial are of trifling import compared with the grave statement made on oath by a public officer in the influential position held by Captain Ball.

“I have the honour to be, my lord,
“Your lordship's obedient servant,
“STUART KNOX.

“The Marquis of Hartington, M.P., &c.,
“Dublin Castle.”

Now, I respectfully say that I think everyone here will concur in that opinion, and whether I am right or wrong in suggesting that some friends well inclined towards Captain Ball, the first accuser, got up the

memorial to back him out and aid him; whether I am right or wrong in that there is no doubt but the generality of the charges, and the nature of the language employed, are of insignificance, compared with the sworn allegations contained in the evidence given by those important officials. On the 10th of August, this letter was received from Mr. Burke, the Under-Secretary :—

“Dublin Castle, 10th August, 1871.

“SIR,—I am directed by the Lord Lieutenant to acknowledge the receipt of your letter of the 3rd inst., on the subject of the approaching inquiry into the charges preferred against the magistrates of the Dungannon district; and I am to acquaint you that your communication shall be brought under the notice of the commissioners appointed to hold the inquiry.

“I am, sir, your obedient servant,

“T. H. BURKE.

“A. Maekenzie Lyle, esq., J.P.,
“Donaghmore House, Dungannon.”

I take it for granted you have that communication before you. On the same day he wrote this further letter :—

“Dublin Castle, 10th August, 1871.

“SIR,—Referring to my letter of the 31st ult., I am directed by the Lord Lieutenant to acquaint you, for the information of the magistrates of the Dungannon district, that William Allen Exham, esq., Q.C., and James Charles Coffey, esq., Q.C., have been appointed by His Excellency to hold the inquiry into the charges preferred against the magistrates. The commissioners have been requested to notify to the magistrates, through you, the time and place at which the inquiry will be held.

“I am, sir, your obedient servant,

“T. H. BURKE.

“A. Maekenzie Lyle, esq., J.P.,
“Donaghmore House, Dungannon.”

You most properly notified to us the time and place, and therefore we attend in pursuance of the warrant before you. I think it would be a waste of time to suggest that Captain Ball was the *fons et origo* of all these charges—the memorial may be regarded in one sense as independent and unconnected with those charges, but the statements in the memorial are in truth insignificant as compared with the main charges made by Captain Ball, and it would seem to me, is got up rather in aid of these charges. And now to listen to Captain Ball, not at once saying either that he adheres to the charges, and will seek to substantiate them, or that upon further consideration he retires from them, the magistrates having challenged him to the proof, is perfectly intolerable. We should know how we stand, and he should say one thing or another. But to say that he merely sits here to “watch the proceedings,” is, I say it with the greatest humility, in his presence and the presence of his learned counsel and friend, to place himself in a most unsatisfactory position.

Mr. Commissioner COFFEY.—With respect to supplying these particulars, I think, as regards the memorialists, it would be hard to ask them to give particulars of drumming parties, if they appeared in town three times a week regularly. But it is alleged that on some occasions there were breaches of the peace and destruction of property committed, and there ought, I think, be no reasonable difficulty in the way of giving particulars of these occasions. There were, of course, many occasions on which these drumming parties passed over without any actual breach of the peace being committed. There are certain specified charges contained in the memorial. Of these you don't want particulars. But of any other cases of breaches of the peace, or destruction of property, of which it is intended to give evidence, we think the particulars of the time and place ought to be furnished to you.

Sergeant *Armstrong*.—To be sure; that we may know what we have to meet.

Mr. Commissioner COFFEY.—We do not at all mean cases of simple drumming parties, but occasions on which breaches of the peace were committed. As to going back twenty years, I don't think Mr. McLaughlin

would ask to go back so far as that; some of the magistrates now were not magistrates then at all.

Sergeant *Armstrong*.—They may want to visit the sins of the father upon the child.

Mr. *McLaughlin*.—The course taken by Sergeant *Armstrong*, although a very proper course to be taken at Nisi Prius—a course which I would take in humble imitation of the leader of the Nisi Prius bar—is still a course wholly unparalleled in the history of these commissions.

Sergeant *Armstrong*.—I did not think you would advert to that. The argument my friend suggests on the Belfast and Derry cases is not sustained. There is no analogy between this case and the cases of Belfast and Derry. In these cases there was no charge against any individual; they were merely inquiries into existing systems of police, and whether salutary changes could not be introduced. It was foreign to the purposes of these inquiries to introduce particular charges, and quite foreign to give instances. These cases have no application at all.

Mr. Commissioner *COFFEY*.—Really it requires no precedent whatever. It is a plain matter of common sense and justice. As to the general character of the transactions, we will hear general evidence. But if they mean to give specific evidence of matters and details not included in the memorial, why, upon the simplest principles of justice, the parties who are to be affected by the transactions should have notice of the transactions to which the evidence is going to be applied.

Mr. *McLaughlin*.—Allow me to complete what I was going to say when Sergeant *Armstrong* intervened. Now, the Sergeant, I say it with profound respect, is in error in supposing that there were no charges against individuals in the Derry case. The record is on record, and the record says—"The existing local arrangements for the preservation of the peace of the city of Londonderry, the magisterial jurisdiction exercised within it, the strength and constitution of the police usually employed there, and the proceedings taken by the magistrates and other loyal authorities towards the prevention and suppression of riot, tumult, and disturbance."

Mr. Commissioner *COFFEY*.—We will hear evidence as much as you choose to give of a general character, but particulars of specific cases relied on should be given.

Mr. *McLaughlin*.—I was about to ask whether or not we are to be restrained from going into anything of which we have not given particulars.

Mr. Commissioner *COFFEY*.—Certainly not.

Mr. *McLaughlin*.—Then we will give the best particulars of the specific cases in our power.

Mr. Commissioner *COFFEY*.—You understand what should be done perfectly well.

Sergeant *Armstrong*.—Before we pass from this preliminary conversation as to the course of procedure, I would like to know from Mr. Barry whether his client retires from or perseveres in his charges. We really ought to have it announced distinctly and at once, whether Captain Ball perseveres in his charges or abandons them. It is necessary for the guidance of our proceedings.

Mr. Commissioner *COFFEY* (to Mr. *Barry*).—Do you intend to offer any observations?

Mr. *Barry*.—I am quite ready to do so. I have maintained the most exemplary silence up to the present time, and have allowed this discussion to go on between the learned and distinguished Sergeant on the one side, and Mr. *McLaughlin* on the other. The real difficulty that I feel with respect to Captain Ball is, that he is before the Commissioners in a very anomalous position. I deny that Captain Ball ever made anything in the nature of accusations. An inquiry was held before the magistrates into charges made by one of the constabulary force against his officer. To that inquiry Captain Ball was summoned in the ordinary way as a witness by the complainant. He had not the slightest idea in the world of why he was summoned. He was called into the witness-box,

he was asked a number of questions; to these questions he gave answers on his oath, according to the best of his information, and the best of his belief and knowledge, and without the slightest intention of being anything in the shape of an accuser of anybody. Those answers were given by him on that occasion, as I say, according to the best of his information, knowledge, and belief, and by those answers he is quite ready to abide. I would be the last man in the world—I consider I would be doing Captain Ball a grievous wrong, if I asked him either to withdraw a charge he thought he had a substantial right to make, or to persevere in a charge which I thought he had any reason whatever to withdraw from. When I stated I was here to watch the proceedings on the part of Captain Ball, it was because I really don't know what else is to be done by him. The magistrates of this district have come to the conclusion that the facts stated, or the opinions expressed, by Captain Ball with respect to them in his evidence on that occasion affect them prejudicially, that their honour is impugned by them, and the administration of justice affected; and, being under that impression, they have taken very naturally and very properly the course of calling on the Executive Government—having in the first instance called on the Lord Chancellor, under the erroneous impression that the matter was within his jurisdiction to institute an inquiry into this transaction—for the purpose of having it cleared up, whether the allegations that were made on that occasion were substantially correct. Now, it is perfectly possible that in some of the opinions expressed by Captain Ball on the occasion in question he may have been in error, while they were, at the same time, his honest opinions expressed at the time, and for the reasons stated. That being so, it is for the commissioners to deal with the matter as they think proper, for the purpose of clearing up the transactions which the magistrates desire to have inquired into. But for myself, I cannot see why it is that Captain Ball is to be brought forward in the first instance on this inquiry. He cannot come forward to make accusations, for he is preferring none. Whatever may be considered as an accusation on the part of Captain Ball is already before the Commissioners, being merely the statement made by him in his evidence on the former inquiry. By that he is ready, as I said, to abide. He admits the substantial accuracy of the report. There is, however, one very great inaccuracy pervading the whole, in which he is represented as stating that he came to certain conclusions from conversations that he had with the local magistrates of the place. Captain Ball states that is purely an error, and that what he stated was "from conversations with the leading Catholics of Dungannon." On the face of it, I would say it is an error.

Mr. Commissioner *COFFEY*.—It is plainly a mistake.

Sergeant *Armstrong*.—If Captain Ball says so, I accept his statement. I was bound, of course, to read it as I have it.

Mr. Commissioner *COFFEY*.—The context shows it.

Sergeant *Armstrong*.—This shows the necessity of going to the authorized record.

Mr. Commissioner *COFFEY*.—We will relieve you and Mr. Barry from all difficulty on that part of the case. What appears to me to be the proper course, subject to the concurrence of my colleague here, is to hand down the document signed by Captain Ball himself, when he is in the box—as of course he will be there—and ask him does he wish to explain anything in the document, or wish to add anything to it—whether he wishes to adhere to it, to qualify it, or withdraw from it; and then Sergeant *Armstrong* will have every opportunity of asking Captain Ball to show the grounds for his statement, or take any other course he thinks proper. We are bound to hold the inquiry; we are bound, under our commission, to sift every bit of this transaction from the beginning to the end, with respect both to the question between Captain Ball and the local magistrates, and the memorialists and the magistrates.

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Sergeant *Armstrong*.—I would call the attention of the Commissioners to this answer of Captain Ball, "I consider there was partisanship exhibited in the administration of justice in regard to prosecutions in these cases." He is bound, I say, with great respect, to say in what cases? Then he is asked by the President, "Do you refer to the constabulary," and his answer is, "The police are not administering justice;" but later on he says, "I considered there was partiality shown both by the magistrates and the constabulary." Surely he must give instances. He knows that he is not a person unconnected with the law.

Mr. Commissioner COFFEY.—Of course he will be examined; if nobody else puts him into the box I will call him myself.

Mr. *Barry*.—I never for a moment meant to say that Captain Ball would not be examined.

Sergeant *Armstrong*.—I understood from my friend that Captain Ball in this proceeding had transformed himself from a magistrate into a watchman.

Mr. Commissioner COFFEY.—That is not what was conveyed to my mind. What I understood Mr. Barry to say—and it is right there should be no misconception on this—that Captain Ball, standing and abiding by the statements he made on oath in another place, did not want to occupy the position here of an accuser, but that in this court of inquiry and investigation he will give us all the assistance he can.

Mr. *Barry*.—Captain Ball will be prepared with the most perfect frankness to come before the Commissioners and say why he came to certain conclusions, or if he finds that the answers he made at the moment involved more than he intended to convey, he will, with equal frankness, say so.

Mr. Commissioner EXHAM.—That is just what I would expect from him.

Mr. *Barry*.—I take it, of course, that it is entirely in your own hands to say what the line of proceeding will be, whether you think, in the first instance, Captain Ball should be produced before you, or whether it should be at a later stage of the proceedings.

Mr. Commissioner COFFEY.—The magistrates cannot be called on to prove a negative.

Mr. *Barry*.—I am speaking with respect to the question whether you think you should go into the general statement in the first instance or not.

Mr. Commissioner COFFEY.—No, no.

Mr. *Barry*.—The reason why I ask when it is Captain Ball ought to be examined is this,—the magistrates might have had this investigation held simply on Captain Ball's previous statement; they might call for an inquiry into that, and the inquiry might be limited to that. My friend, Sergeant Armstrong, has endeavoured by all manner of insinuation, and indeed by direct statement, to convey the idea that the inquiry with which my friend Mr. McLaughlin is concerned is connected in some way with Captain Ball. What connexion there is between them I cannot conceive. I have never heard the slightest suggestion, nor have I had the slightest knowledge of anything going to be said or done on the part of the memorialists; I have no more knowledge of their case than I have of what is going on in the inmost recesses of the very comprehensive and very complex brain of Sergeant Armstrong. But I can conceive a point of view in which the inquiry about to be entered on as to the case of the memorialists may be in one respect mixed up with the statement of Captain Ball. Captain Ball has been here as resident magistrate for a couple of years. He gave evidence at the police inquiry, in June last, with respect to the impressions produced on his mind by acts of the magistrates as to facts within his knowledge; he gave his reason for his belief that they were likely to be prejudiced in a certain way. Well, the grounds for that belief, whether right or wrong, whether proper or not, existing in the minds of the Catholic community will, unquestionably, if elicited at all, be elicited by the case that is to be made on the part of Mr. McLaughlin. That is the reason why I think it may be said there is a sort of connexion between the two cases—the case of

the memorialists on the one side and the case of Captain Ball on the other—although Captain Ball has nothing whatever to do with the memorial. He has made certain statements. What facts he had for these he will, of course, with all the frankness of a gentleman, explain to the Commissioners. On the other hand, when he comes to the impressions left on his mind by conversations with leading persons of the locality—these impressions must, of course, have been produced by the facts within their own knowledge, and which they will, I suppose, undertake to elicit—it is for you to say whether you wish to examine Captain Ball on that point at present. If you do, I have only to say that I tender him at once for examination.

Mr. Commissioner COFFEY.—We don't at all mean to say that we are going to give any opinion, or come to any conclusion, until the whole inquiry has terminated. But I may state this, that whatever value can be given to the statements and case made by the memorialists in connexion with the impressions on the mind of Captain Ball, you shall have the whole advantage of that.

Mr. Commissioner EXHAM.—Certainly.

Mr. *McLaughlin*.—Allow me to say, as representing the interests of the memorialists, that before Captain Ball is put into the box, I think it is only fair I should be supplied with copies of the documents used already by the other side. I have been already refused the notes of the constabulary inquiry. I am free to say, that if Mr. Commissioner Coffey has deliberately made up his mind I should not have them, I know him too well to think I could change his mind.

Mr. Commissioner COFFEY.—Don't say that.

Mr. *McLaughlin*.—I certainly think it is important that I should have the notes, and I would ask the attention of Mr. Commissioner Coffey to this passage in the letter of Mr. Mackenzie Lyle, of the 3rd August, read by the Sergeant. In this letter "the magistrates request the government will order that the commissioners named by His Excellency to hold the coming inquiry shall be furnished with the minutes of the evidence taken before the county inspectors on the police inquiry," although the report in the *Star* had been sent up at the same time. Now, surely, if it is fair that the Commissioners should be furnished with the notes, it is also fair that I, who have to deal with the same transactions from another point of view, should be furnished with them. I may say that the necessity for having the notes is shown from the fact that the Sergeant's reading of the evidence of Captain Ball conveyed a matter which was altogether a misconception, namely, that Captain Ball's conversations were with the "local magistrates"; it should have been the "local Catholics." They, of course, are not as important as the magistrates, but still they have a permissive existence. I want to add to my request for the notes, that copies of the very diplomatic correspondence—particularly the letters of Mr. Lyle—read by Sergeant Armstrong, shall be furnished to us. I think it will appear clear to the minds of the Commissioners, as men of experience in the conduct of cases in court, that I would have no fair play in the cross-examination of Mr. Lyle and the other magistrates unless I knew what was the previous version given by them to the Castle of their conduct. These documents were skilfully constructed, most skilfully constructed; they look as if they were written by some lawyer retired from business, and are exceedingly well done. Surely, it is important that I should be supplied with these documents. I am in a state of utter destitution as regards the correspondence; I have not the original warrant, nor have I the notes of evidence at the police inquiry. I would ask the commissioners to give us facilities to take copies of this correspondence in the presence of your secretary. It would be, I submit, unintentionally unfair that we should be driven into our case without knowing the case on the other side.

Mr. Commissioner COFFEY.—I don't see the slightest objection to complying with that part of your request. Sergeant Armstrong has read the documents from his

brief, and, of course, the shorthand-writer will put them on the notes.

Sergeant *Armstrong*.—I throw no difficulty in the way of my friend; he is welcome to everyone of them if he will send clerks to copy them at his client's expense.

Mr. Commissioner COFFEY.—And as to the notes of the police inquiry, Mr. M'Laughlin; although I refuse to give them to you, for the reason that I don't think you have anything to do with that transaction at all, yet inasmuch as the first thing that will be done when Captain Ball comes into the box will be to hand him the report, and ask him the question I have mentioned, you will have the advantage of the notes too.

Mr. Commissioner EXHAM.—The only portion of the inquiry sent to us is the evidence given by Captain Ball himself. There were other witnesses examined at the inquiry, and I think the magistrates in their letter call for all the notes. All we have got is the evidence given by Captain Ball, and signed by himself.

Mr. M'Laughlin.—It would be a perfect impossibility to conduct this inquiry without having the document.

Mr. Commissioner COFFEY.—And indirectly you shall have it, for we cannot prevent you having it.

Mr. M'Laughlin.—I will endeavour in some way or other to have it directly or indirectly, you may be certain.

Mr. Commissioner EXHAM.—Substantially it is word for word with the report in the *Northern Star*. The important answer is this—"I don't think I complained to you for not having done so, I considered it would be useless to do so, because I considered there was partiality shown to these parties both by the magistrates and the constabulary." What we want Captain Ball to do is to give us instances—tell us what they were.

Mr. Barry.—I have to ask the Commissioners to do now what I think is only fair under the circumstances. I have not seen the warrant nor the correspondence, and until I heard the commission read this morning I did not know anything whatever of its general purport. I came here fully under the impression that the investigation would commence by the case of the memorialists being entered into, and having only arrived in Dungannon at nearly one o'clock this morning, and not having had the opportunity of any consultation with Captain Ball, I would ask you, if you intend in the first instance to have his evidence, to adjourn till to-morrow morning to give me time to advise with him; up to this I have not been able to do so.

Mr. M'Laughlin.—Both in Belfast and Derry the inquiry never went further on the first day than the mere formal opening.

Mr. Barry.—I was about to say that in Belfast and Derry the commission was only *pro forma* opened, and the line of proceeding laid down. There was then an adjournment till the next day.

Mr. M'Laughlin.—And eventually there was a saving of time by taking that course.

Mr. Commissioner EXHAM.—I don't think there can be any objection to that; it appears reasonable.

Sergeant *Armstrong*.—I have no objection to offer. It is a novel jurisdiction, and an adjournment on the first day appears to be almost an incident to an inquiry of this sort. I would take the liberty, before the Com-

missioners adjourn, of first suggesting to my friend Mr. M'Laughlin that he would kindly bear in mind that we offer to furnish him with these documents, that is to give him every facility to get them, so that it may not be suggested hereafter that he could not get the documents; and secondly, whether the Commissioners will permit, I will not say solicit, but permit any statement in the way of explanation or argument by Mr. Barry, Mr. M'Laughlin, and myself, or will they content themselves merely with the evidence.

Mr. M'Laughlin.—I don't desire to make any speech.

Mr. Commissioner COFFEY.—I think that is a matter as to which we should rather be guided by what you think most judicious for the interests you are respectively engaged for.

Mr. M'Laughlin.—I think it is due to Sergeant Armstrong to state that I never intended to convey in the slightest degree that any desire existed on his part to keep back any documents. My application was to copy the official record of the court.

Sergeant *Armstrong*.—I am certain of that.

Mr. Commissioner EXHAM.—With respect to any witnesses you may want to examine, Mr. M'Laughlin, if you give in the names to our secretary he will give you summonses. I suppose you will want the county inspector. I don't know whether he is here or not.

Sub-Inspector *Smith*.—He will be here to-morrow if you want him. I can communicate with him.

Mr. Commissioner EXHAM.—The county inspector can be had to-morrow or the next day, or whenever he is wanted, I suppose.

Mr. M'Laughlin.—To-morrow or the next day, or whatever time will most suit the convenience of the gentleman.

Mr. Commissioner EXHAM.—Is there any other official witness you want?

Mr. M'Laughlin.—We will require the petty sessions clerk.

Mr. Commissioner EXHAM.—I suppose he is on the spot.

Mr. M'Laughlin.—We think it better to formally ask for his attendance. I have the names of a few of the constabulary who are not now in Dungannon. I apprehend they are in the neighbourhood, and can be had at any moment.

Mr. Commissioner EXHAM.—Give in the names; we will have them for you.

Sergeant *Armstrong*.—I will ask my friend Mr. M'Laughlin to give us the names of the memorialists, in order that we may see who they are.

Mr. M'Laughlin.—Certainly.

Mr. Commissioner COFFEY.—The Sergeant is entitled to have the names of the memorialists. The document is a long one; there are 150 names to it.

Mr. Commissioner EXHAM.—I will give the memorial to the secretary, and if Mr. Kelly sends up some person to him, he may take a copy of all the names to the memorial. That is the shortest way.

Sergeant *Armstrong*.—Very well.

It was then arranged that the commissioners should sit the following and each succeeding morning during the inquiry, at half-past ten o'clock, A.M., and continue the proceedings till five, P.M.

(Adjourned.)

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August 16.

SECOND DAY.

August 17.

SECOND DAY.

THURSDAY, AUGUST 17, 1871.

Mr. *Barry*, addressing the Court, said :—Gentlemen, as you will enter upon the consideration of the case of Mr. Ball first, I am now ready to produce him as a

witness, and examine him in relation to what was stated by him on the former inquiry.

Alexander F.
Ball, esq., R.M.

Alexander Francis Ball, esq., R.M., sworn.

1. Mr. *Barry*.—I propose to examine Mr. Ball with regard to the portions of his former evidence that, I conceive, relate to the subject of the present inquiry, that is, only those portions of his evidence that have any bearing on the conduct of the magistrates of Dungannon. I take it that the inquiry, so far as Captain Ball's previous evidence is concerned, is limited strictly to any statements made by him affecting the magistrates of Dungannon, and, therefore, I shall ask him no questions on any other subject. Captain Ball, you recollect the inquiry which took place in this court-house on the 23rd June last?—In the police-barrack.

2. You gave evidence on that inquiry?—I did.

3. In the first place allow me to ask you whether, previously to your actually going into the witness-box to give evidence there, you had any communication with anyone as to the nature of the case which you were called on to give evidence in?—No, I had not.

4. Had you any idea whatever of the description of evidence expected from you, or that you might be required to give?—Not the slightest. I knew nothing until I was asked the questions.

5. Had you any reason whatever for believing—did it at all occur to you till the questions were put to you—that anything would be said affecting the conduct of the magistrates of Dungannon?—I had not.

6. No reason whatever?—None whatever.

7. In the course of your examination on that inquiry certain questions were put to you?—Yes.

8. Relating to the Dungannon magistracy; and the first question that I find having any bearing on them, I think, is this. You had been giving evidence relating to drumming parties, and in reply to a question you made this statement—"I consider there was partisanship exhibited in the administration of justice in regard to prosecutions in these cases;" and then, having been asked whether you referred to the constabulary, the answer is—"The constabulary were not administering justice." Therefore, that answer you intended to apply to the magistracy?—Yes.

9. Will you state with entire candour what you meant to convey by that answer?—Well, I had not the slightest intention of intending to impute anything approaching to corrupt partiality to any magistrate, or to the body of magistrates generally—not in the slightest degree.

10. The words being such as might seem to convey that idea, what did you really mean by using those expressions?—Well, I simply had in my mind, and intended to convey, that I considered that from certain circumstances—slight circumstances—that came to my knowledge since I have been here, there is a certain amount of prejudice existing in the minds of the magistrates, which I thought was in a slight degree exhibited in one or two cases.

11. Did anything impress you with the idea that without any intention or desire to do injustice they were not always so free from prejudice themselves as that they could discharge their duties in the way that seemed to you most satisfactory?—There are one or two slight circumstances, as I say, that I could refer to. There was a case that occurred here, I think, sometime last winter twelve-months, I could not exactly say in what portion of the winter it was, a young man, a Catholic, had been beaten in the immediate neighbourhood of the town. The case was inquired into at the petty sessions. From what transpired afterwards in the

chamber, when the magistrates retired to consider the evidence, I was led to infer that there was, among some of the magistrates, at least, some slight feeling of, I won't say partiality, but simply prejudice, exhibited by them that I think was not what ought to have been exhibited by magistrates. That, with one or two other similar circumstances, leaves the impression on my mind naturally, that is to say, that I think it a well-known thing, I believe it is generally considered, that in the whole province of Ulster there is that feeling.

12. Sergeant *Armstrong*.—I must take the liberty of suggesting to you to state matters within your own knowledge. You say that "it is generally known." I deny that it is generally known, or that you are at liberty to say so. State anything within your own knowledge or that occurred to yourself.

Mr. Commissioner *COFFEY*.—He has a right to state the impression on his mind derived from facts and observations.

Sergeant *Armstrong*.—Is it as to all Ulster?

Mr. Commissioner *COFFEY*.—That would be entirely too wide.

13. Mr. *Barry* (to witness).—Did any circumstance really come to your knowledge that impressed you with the belief that in the locality that feeling existed?—Well, I think, from what I was going to say with regard to that very case, the majority of the magistrates agreed that the case should be dealt with in a rather severe manner; and one of the parties engaged in the beating of this young man got two months' imprisonment with hard labour. There were two magistrates who considered that a small fine would be quite a sufficient punishment to inflict on him. Well, that as I said, left the impression on my mind that these gentlemen were not altogether unprejudiced.

14. Had you any reason for knowing that amongst any section of the population of Dungannon the belief prevailed that justice was not impartially administered?—Oh, yes; I know this, that since I have been here—now not quite two years—I have had I suppose as many as from forty to fifty applications, both verbal and written, asking me to attend sessions in the town of Dungannon.

15. Sergeant *Armstrong*.—Would you be good enough to produce any of them?—I don't think I can. I don't think I ever kept them.

16. You may state the contents?—I only say that I have received communications, verbal as well as written, asking me to attend petty sessions, either here or in other parts of my district, as no confidence could be placed in the local magistrates.

17. Mr. *Barry*.—Then I understand that in the answer you gave to that question you meant to convey the impression upon your mind that was made by those representations and by the facts?—Certainly.

18. And nothing more?—Nothing more.

19. And you had no intention of referring to any deliberate acts of misconduct on the part of the magistrates?—Certainly not.

Cross-examined by Sergeant *Armstrong*.

20. Would you have the goodness, Captain Ball, to let me know who were the magistrates who differed, when some thought that two months' imprisonment should be inflicted and others thought that a fine would answer the merits of the case?—Do you mean all the magistrates present?

21. Yes, the magistrates present, because that appears

to be the foundation of the main part of your view?—Oh, the foundation of the main part of my view—what I refer to is, that two of the gentlemen, the magistrates, having considered that a small fine would be one I think—

22. I take it for granted that there were several magistrates present?—Yes.

23. And after the evidence had been given they retired to their room to consider their decision?—Yes.

24. And the majority thought that a punishment of two months' imprisonment would be effectual, which was done accordingly?—Yes.

25. And two others, in the course of the discussion, suggested that a fine would answer the purpose?—Yes.

26. And from that you inferred that those two were prejudiced?—I did.

27. Did you infer that they were corrupt?—No, I did not.

28. Did you think that they were incapable of discharging their duty as magistrates?—No, I did not.

29. Had you any objection to act with them further on the bench?—No, I don't think I conveyed any such idea.

30. You don't mean to convey that. Did you ever hear of a difference of opinion amongst judges of the Queen's Bench?—No doubt.

31. And of the Common Pleas?—Yes.

32. And you would not infer that because one of them was in the minority, therefore he was prejudiced and incapable of forming a right and honest judgment?—No, I would not infer dishonesty—certainly not.

33. Give me the names of the magistrates who took your view in favour of the severe punishment?—Oh, I don't mean to say that I suggested that only two magistrates—

34. Not at all?—I don't say that I suggested two; I could not say whom, when I did suggest it, now.

35. Who were the magistrates who adopted your view?—Well, Mr. Courtenay Newton was one.

36. Who were the others?—I think Colonel Knox was another; I may be mistaken as to his having been there, but I think he was.

37. I only ask you to the best of your recollection?—I don't recollect who the others were that formed the majority.

38. Was Mr. Stanley there?—Yes, he was.

39. Was Mr. Richardson there?—I don't recollect Mr. Richardson being there.

40. Was Mr. Nicholson there?—Yes, he was.

41. Was Mr. Lyle there?—I rather think Mr. Lyle was, but I am not quite sure.

42. Who were the two that were in favour of the minor punishment?—Am I bound to state that?

43. Oh, yes, decidedly?—[Witness appealed to the Court].

Mr. Commissioner COFFEY.—Yes.

Witness.—Mr. Nicholson and Mr. Stanley were for the minor punishment, for the fine.

44. Have you ever yourself in the course of your official life suggested a minor punishment in opposition to the suggestion of others?—Most certainly.

45. You have?—Yes.

46. And you would think it a very strong inference to have drawn from that that you were prejudiced and partial?—Well, yes.

47. That would appear to be rather hard lines, as they say. Well, will you tell me what was that case at all; was it a waylaying?—I fancy I described it to you.

48. The case of the young man who was beaten?—Yes, I said he was waylaid and beaten severely.

49. And you concurred in thinking that two months imprisonment was a sufficient punishment?—For one of the parties; yes.

50. You did not suggest anything weightier?—I don't think I did. I have no recollection of having done so.

51. The result was then that the punishment sug-

gested by the majority of the magistrates was carried out?—Yes.

52. And you make no charge now against the two dissentients?—No, I do not.

53. You did not mean to say that their conduct was partial and corrupt?—No, most decidedly not.

54. You say that since you have been here you have had forty or fifty applications, verbal and written, and that the written ones are not forthcoming?—Well, I really don't think there are any of them.

55. Asking you to attend the sessions as no confidence could be reposed in the local magistrates. Now, will you give me the name of any person who ever made that representation to you that no confidence could be reposed in the local magistrates?—Oh, really, I cannot do that, because in some of the instances in which it occurred in writing I was not able to decipher the names.

56. Were they like the signatures to the memorial? Oh, I have not seen the memorial, so really I cannot tell.

57. They were literary curiosities?—That may be. There are a great many other literary curiosities about the world.

Mr. *McLaughlin*.—I read Mr. Lyle's letter last night, and I never saw anything like it intended to be English.

58. Sergeant *Armstrong*.—He is entitled to that as a justice of the peace. (To the witness).—Some of them then were practically anonymous?—Practically so, as you say.

59. Were any of them at all legible?—Oh, some were; yes.

60. Give me the name of any decent man connected with the country who complained to you that he had no confidence in the local magistrates?—So many of those letters were torn up on the spot, as I never suspected that I would be asked the question—I made no note of them—I did not keep them.

61. I wish to deal fully and fairly with you in order that you should have an opportunity of stating anything on which you based the opinion that you gave the other day. Have you now exhausted your reasons for thinking that a certain amount of prejudice—which is the word you now use; have you exhausted your reasons for stating that you think there was a certain amount of prejudice existing among some of the magistrates of this district, because now is the time to do it; in three or four days or weeks it would be an awkward thing to have you coming up again with a new list of accusations?—Oh, really, I was not aware that I made any accusations.

62. Now have you exhausted the subject—have you now stated all your reasons for thinking that this modified term of "prejudice" is applicable?—(Pauses).—Let me see; there was something else. Oh, there was another circumstance which did not arise out of any case that was before us; but it left an impression on my mind which I had better perhaps explain.

63. Do; I want to have it openly and notoriously?—Under certain circumstances I had applied to the Government to know what was to be done, or if any steps were to be taken with regard to those drumming parties that are of such frequent occurrence here; and I was sent in reply to my letter the official opinion of the law adviser, and the direction on it was that it should be read out from the bench by the magistrates. Well, when I first showed this document to the magistrates in chamber, before we came into court, one or two of them objected, and asked me to ask some further question or two with regard to this opinion. I did so, and the reply to that was, simply, that it should be read—referring to the first direction—from the bench. Well, that was done, no doubt; but it was done in a way that left on my mind the impression that it was done in rather an unwilling manner, and not until the court was nearly cleared of civilians, because I think there were some eight or ten Constabulary remaining in court, and one or two others; there may have been three—not more—civilians, ex-

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elusive, of course, of the magistrates, remaining in court. Instead of its being read, as I naturally expected should have been done, when the court was full of people, it was left until the court was nearly empty.

64. Did you make any objection to that course at that time—to the period at which it was read?—At the time I did not. I wanted to see what would be done. I was on the point of making an objection.

65. But you did not do it?—No, I did not.

66. You did not suggest that it should be done earlier?—I did not; I wanted to see what would be done.

67. You did not intimate to your brother magistrates the importance of having it read at any stated time of the sessions?—No, I did not.

68. You left it to their own discretion, and you acted with them, and you heard it read afterwards?—I did.

69. I believe the drift of that opinion was that there was no case for a prosecution?—Oh, excuse me, it was not the case that was being heard, it was simply with regard to this opinion of the law adviser.

70. Have you that opinion?—I have a copy of it—(produces it).

71. Sergeant *Armstrong*.—(Reads.)

“Every assembly of a number of persons which from its general appearance and accompanying circumstances is calculated in the opinion of reasonable men to excite terror and alarm, or to produce danger to the tranquillity and peace of the neighbourhood, or to lead to a breach of the peace, is an unlawful assembly; and every person concerned in it is indictable at common law for a misdemeanor. If, as would appear from this file to be the case, the drumming parties in question are assemblies of this character; it makes no difference, in my opinion, whether they assemble in a public street, or place, or in a field. The police should summon and apply for informations against the most prominent of the parties concerned in such assemblies, and the magistrates should receive informations and send such parties for trial. In simple cases it may be sufficient to bind the parties to good behaviour. As these drumming parties have not hitherto been interfered with, it would be a prudent step if the magistrates would take the opportunity to announce the law from the bench, caution the people against such practices, and state their resolution to preserve the peace and tranquillity of the town and neighbourhood by enforcing the observance of the law. If the noise merely, apart from the question of the peace of the place, disturbs the inhabitants, it is a public nuisance, which the inhabitants who complain of it may prosecute. The circumstances of this case do not enable the magistrates to deal with it effectually under the Towns Improvement Act.

“W. M. J.

“9th December, 1869.”

Witness.—That, I should say, was not sent to me originally. It was sent to the resident magistrate in Newry originally, and to me afterwards.

72. Do you recollect that Mr. Hamilton read that opinion from the bench?—Certainly I do.

73. I would be very sorry I assure you—unaffectedly sorry—to misunderstand you in any respect. You say you were waiting to see what they would do. Do you mean to say that you were exercising a sort of surveillance over your brother magistrates in order to complain of them?—No, because I made no complaint whatever.

74. If you thought it should have been read at an earlier or later period, why did you not, before you came on the bench that morning, suggest what you thought would be an opportune time?—Well, I really considered that the chairman would have read it first. I was not at all prepared for its being let to lie over so long.

75. How long did the sessions last?—Well, that I really cannot venture to say now.

76. Will you undertake to say that the court was not as crowded with people when that was read as at any other period of the day?—I do, most distinctly.

77. Do you think it was the business of the magistrates to dispose of the custody cases before they

entered into a matter of the sort?—There was not such a number of custody cases.

78. There was not?—I don't say there was not such a number as delayed the reading of it for a couple of hours.

79. Did you ever afterwards complain to the magistrates that they did not read it at the proper time?—No, I did not.

80. You did not suggest beforehand that you would complain afterwards?—No, I did not.

81. And you kept that up in your own mind ever since. Have you made it a ground of complaint in the memorial?—No, I have not.

82. Have you been in communication with the memorialists?—No.

83. Or any one of them?—Not on the subject of the memorial.

84. Did you know that the memorial was about being got up?—I did not.

85. You had nothing whatever to do with it?—Nothing.

86. And your anxious wish is now to disconnect yourself from it?—Certainly. I have nothing to say to the memorial at all.

87. Now, having got rid of that matter about the reading of the law adviser's opinion, I will ask you this question:—Since you came here, Captain Ball, a stranger to this locality, have you been met cordially, and I will add confidentially, by the magistrates of the petty sessions district of Dungannon?—Cordially and confidentially.

88. Yes, cordially and confidentially; and have they interchanged ideas with you as to the peace of the neighbourhood, and the best way of preserving it—have you been received with cordiality as a gentleman and a magistrate?—Distinctly I do state that I have been received with cordiality—most distinctly—but I don't know that there was anything particular—

89. Have they communicated with you confidentially as to the best way of preserving the peace, particularly with reference to those drumming parties?—Oh, I have had conversations with some of the magistrates on that subject.

90. Do you recollect the letter that Mr. Courtenay Newton wrote to you on the 1st of February, 1870, when you were not here?—I know he wrote to me. I don't recollect the date of it.

91. I hope you did not tear up such letters as that. I will read this one to you:—

“1st February, 1870.

“MY DEAR CAPTAIN BALL,—As I told you in conversation, my opinion is that we cannot do without some substitute for the Party Processions Act.”

I suppose you are aware that it was then in contemplation among some people, if they could, to obtain the repeal of the Party Processions Act?—Yes. Oh, I think I recollect the letter now.

92. And he suggested that it would be unwise to repeal the Party Processions Act and not have some substitute for it?—Yes, I do recollect that.

93. “Of course,” his letter proceeds, “whatever law is adopted should strike at all processions of a party or political character?”—That sentence I don't recollect.

94. Well it is in it?—I am not denying it.

95. I will ask you to go home to your lodgings and get that letter?—I don't know that I have it.

96. Well, if you have not, let us have no controversy about it?—I assure you I am not saying it is not in it, but I don't recollect the sentence.

97. The letter proceeds:—

“The difficulty is to effect this without trenching on the liberty of the subject further than is necessary for the preservation of the peace. I formerly suggested to Mr. Molony—”

I recollect there was a paragraph about that.

[Counsel read on.]

“A plan which would, in my opinion, meet the difficulty. Everyone knows that if a large majority of the people,

amounting almost to unanimity, wished to have Orange or other processions one could not object to them; but in every locality there are points where the minority become more formidable, and these are the competitive points where the magistracy feel alarm and adopt precautions. These points are generally in towns and in particular streets; therefore, if we could keep processions out of those disputed localities, the object of a Party Processions Act would be attained. My plan is, therefore, to authorize the Lord Lieutenant, or magistrates at petty sessions, to prescribe and proclaim a district in which, for such time as should appear by the proclamation, it would be illegal to have any procession or assemblage of people—with or without music—to stop thoroughfares, &c.; and that parties should be subject to fine or imprisonment, or both, for breach of the proclamation, by summary conviction; and fixing a minimum as well as a maximum of punishment, giving to magistrates and police the power to arrest parties committing the offence; and if the magistrates are resisted in dispersing or preventing such processions, the mobs should be dealt with as a case of riot, and parties comprising them prosecuted and subjected to a heavy maximum punishment if convicted."

98. You recollect all that?—I recollect generally the substance of it.

99. Did you and he after that confer as to the best thing to be done on more occasions than one?—We have had conversations on the subject undoubtedly.

100. Now you state that this opinion of the law adviser was about to be read at a previous session, and that it was then suggested that it should stand over for some further inquiry from him?—Yes.

101. Do you recollect asking Mr. Newton his recollection of what had occurred in reference to the postponement of the reading of it?—No, I do not.

102. Well, I will read his letter to you of the 15th March, 1870, which demonstrates that you did?—I am not saying that I did not; I only say I don't recollect.

103. (Counsel read)—This is from him to you:—

"15th March, 1870.

"MY DEAR CAPTAIN BALL.—You ask my recollection of what took place at petty sessions when the magistrates considered the reply you got from the law officers. The magistrates seemed to be of opinion that so long as the musical parties did not play party tunes, and did no act to indicate an intention to do an illegal act, but merely walked along roads, that it did not constitute an illegal assemblage."

That was the opinion of the magistrates?—Yes.

104. It will be my business hereafter to demonstrate that that is the law. The letter proceeds:—

"And even if the law is that a hostile party proceeding from town to attack them converted both into an illegal assemblage or riotous party, until that was done the former party were not indictable; for if so, there was no necessity for the Party Processions Act; and the magistrates referred to a case where depositions were taken in a proceeding at petty sessions against Frizell, Hodgett, and others, in which it appeared that the drumming party passed through the town, stones were thrown from that party which broke the windows of a man named Houston, and that the windows of the Roman Catholic church were broken same evening either by that party or by stragglers from it. Evidence was given that the defendants were among the party when marching and playing music, but no evidence identified them as with the party when the windows were broken. The depositions were sent up to the Law Adviser of the Crown by Mr. Molony, R.M., and in reply he got the opinion that the depositions did not disclose any evidence of an offence for which the defendants could be indicted. The magistrates in conference, as you remember, considered that parties marching with music along the road, and even coming into the town, though it is much to be deplored and deprecated, could not be successfully prosecuted; and the failure of an attempt to do so, on what would, as against such parties, appear an empty threat of prosecution, would only aggravate the evil. The point is not is the opinion you produced a good one, but does it apply to the facts under consideration; and the magistrates were of opinion it did not, and therefore saw no advantage, but possibly injury, in reading it.

"Yours, &c.,

"COURTENAY NEWTON."

Then, it went back to the law officer?—Yes.

105. And he returned it without note or comment, saying that it had better be read?—Yes.

106. And it was accordingly read?—Yes.

107. And you made no suggestion as to the time, or any complaint afterwards that it was not read earlier?—No, I did not.

108. Have you any specific act of partiality or mal-administration of his office to make against any magistrate of this district?—Well, I think I have already said no, Mr. Sergeant, to that.

109. Did you take on yourself personally any more active part than the other magistrates in reference to issuing summonses against drumming parties; did you yourself take any action different from the other magistrates with reference to the summoning of drumming people?—No, I did not.

110. Do you consider it the duty of a magistrate or any part of his office to convert himself into a public prosecutor?—A public prosecutor?

111. A public prosecutor?—No, I do not.

112. Did you think it your business, or the business of the police—which—to go out to reconnoitre those drumming parties?—Of the constabulary, decidedly.

113. And you understand distinctly the difference between a peace officer and a magistrate?—Well, I think I do.

114. And that the magistrate who is to investigate the case brought before him is not to be a promoter of the prosecution?—Most distinctly not.

115. You are quite right, I will call your attention to this. The President of the Court in the late inquiry asked you, "Were not drumming parties summoned, and with what result;" and your answer was, "I told you before that some of the Kiltynan party were summoned, but there were many cases in which no one was summoned. I don't think I complained to you about not having persons summoned, as I considered it would be useless to do so, because I considered there was partiality shown to those parties both by the magistrates and the constabulary." Now, upon a more mature consideration of the facts, do you consider that that was an over-heated or a chance observation?—Is that taken from the official report, I don't think there is all that.

116. Mr. Commissioner COFFEY.—This document, Captain Ball, appears to have been signed by you, and this passage occurs in it:—"I don't think I complained to you of not having done so, as I considered that it would be useless to do so, because I considered there was partiality shown to those parties both by the magistrates and the police."

117. Sergeant *Armstrong*.—That is *ipsissima verba* with what I read. The *Northern Star* is quite correct. (To witness.) Did you read the report in the *Northern Star*?—I did.

118. Was it substantially accurate?—I think upon the whole it was.

119. Now it is quite open to any gentleman in the hurry of the moment, or from his attention not being adequately called to a matter, to indulge in a little warmth or exaggeration of language, and if that be the explanation you have to offer I am perfectly willing to accept it, if it be a truthful explanation. I want to know what are the acts?—I beg your pardon, what is your first question?

120. Mr. Commissioner COFFEY.—As I understand, Sergeant *Armstrong* asks you now, whether you adopt to its full extent the passage that is in that report, or whether you wish to qualify or explain it?

Sergeant *Armstrong*.—Or modify it?

Mr. Commissioner COFFEY.—Or modify it now, upon reflection. Just read it.

Witness.—I have done so. Most distinctly I fancied that I had conveyed myself when I commenced, I believe, in reply to almost the first question that Mr. Barry asked me. I fancied that I already explained that I did not at all mean in my evidence given in that court, or in this court of inquiry, to impute any cor-

SECOND DAY. rupt partiality to any side, to any magistrate individually, or to the magistrates collectively, either.

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Alexander F. 121. Sergeant *Armstrong*.—I must ask you to drop the expression "corrupt partiality."

Ball, esq., R.M. *Witness*.—Well, "partiality."

122. You have no specific acts to allege?—No, I have not.

123. Mr. Commissioner EXHAM.—Captain Ball may qualify his evidence on cross-examination.

Witness.—I was simply restating what was the answer I had given at first to the best of my recollection.

124. Sergeant *Armstrong*.—I want to know whether you made to the Lord Lieutenant since you came here, or to his chief or under secretary, or to any other official of the government in Dublin, any report of misconduct or mal-administration by any of the magistrates in the district?

Mr. Commissioner COFFEY.—Now, Captain Ball, I have to tell you that unless you desire to answer that question, as far as this Court is concerned, we won't require you to do so.

Witness.—Well, exactly. I was just going to say that I don't think I am bound to reveal all the reports I may make to the Government on any question.

125. Sergeant *Armstrong*.—I put the question. It is for you to decline to answer it?—Not that I have any objection to answer it, I assure you—not the slightest.

126. I don't want you to reveal any State secrets?—I think I am not bound to answer, as Mr. Commissioner Coffey has stated. He does not wish to make me answer the question if I decline to do so; but I have not the slightest wish not to answer it; on the contrary I most distinctly say that I never did make any report.

Mr. Commissioner COFFEY.—I am aware of that myself, but on public grounds, you know, Sergeant—
Sergeant *Armstrong*.—I would not ask to transgress them.

Mr. Commissioner EXHAM.—I can hardly conceive for a moment that he could have done so, because if he had the Government would have long ago had an inquiry.

127. Sergeant *Armstrong*.—To be sure. (To the witness). I knew what the answer must be. (To the witness). Nothing occurred to induce you to wish to leave this neighbourhood from the conduct of the other magistrates?—Not from the conduct of the other magistrates.

128. And you are in a situation now to act as cordially with them as ever. Has anything occurred to prevent you from harmoniously working with them for the public good?—I am not aware that there has.

129. Do you recollect that part of your evidence in which you stated that you had been informed of certain matters by a constable who applied to you for summons?—I do; Yes.

130. Who was the constable?—I wish to know if I am bound to reveal that?—

Sergeant *Armstrong*.—This is a different matter altogether.

Witness.—In the first place, if I may say, it is not a matter—

Mr. *Barry*.—I object to the question as relating to a matter irrelevant to the question which the Court has to consider. The Court is considering the conduct of the magistrates. That is the only thing it has to inquire into as far as this case of Captain Ball is concerned. The question put to Captain Ball that elicited the last answer was one with reference to the conduct of the constabulary; and the answer in no way involved anything connected with the conduct of the magistrates, and in the next place—

131. Sergeant *Armstrong*.—I yield at once to the objection of my friend Mr. Barry. If the matter applied to the constabulary only I would not press it; but if it applies to the magistrates I would seek to do so. Allow me to read the passage and let us decide. (To witness).—You gave an account of what I think was a very unhandsome thing, namely, that a band came down and played opposite your lodgings.

Mr. Commissioner COFFEY.—It was a very insulting thing; most insulting and discreditable.

Sergeant *Armstrong*.—Most insulting.

Mr. Commissioner COFFEY.—Most discreditable to have permitted it. The police were acting with great remissness in permitting such a thing to go on before the resident magistrate's door.

Sergeant *Armstrong*.—No doubt of it; at the same time the magistrates cannot turn out into the streets.

Mr. Commissioner COFFEY.—The magistrates had nothing to do with it, but the police had a great deal to do with it.

132. Sergeant *Armstrong*.—

"Was that intended to insult you?—I consider so. I have no doubt of it. Such a thing could not have occurred if the police duties had been efficiently discharged.

"Can you give any reason as to why the police did not interfere?—It is my opinion that, as they were an orange party they were not to be interfered with."

Did you intend to apply that answer to the magistrates?—Oh, certainly not.

Sergeant *Armstrong*.—Now there is an end of the matter.

Mr. Commissioner COFFEY.—It is quite right that we should say here that we are perfectly satisfied that no gentleman—not to speak of magistrates—would allow or tolerate such a thing if it were brought under his notice. No gentleman would tolerate it, not to speak of magistrates or officials at all.

Sergeant *Armstrong*.—At the same time these drumming parties get up suddenly.

Mr. Commissioner COFFEY.—It only shows that the police were very remiss.

Sergeant *Armstrong*.—That is a different matter.

Mr. Commissioner COFFEY.—It is not.

Sergeant *Armstrong*.—It is different from the magistrates.

Mr. Commissioner COFFEY.—Quite.

Mr. Commissioner EXHAM.—How could magistrates living three or four miles from the town interfere?—

Mr. *McLaughlin*.—

Mr. *Barry*.—I object to Mr. *McLaughlin* asking any questions during the cross-examination of Captain Ball. I don't at all mean to say that in the course of another stage of the inquiry, Mr. *McLaughlin* may not call Captain Ball as he would any other person; but I object to his putting any questions at this stage, by way of cross-examination, which I don't think my learned friend has any right to do.

Mr. *McLaughlin*.—I can only say that this is an inquiry conversant as well with the conduct of the magistrates, so far as it is impugned by Captain Ball, as with the impugning their conduct by the memorial. Have I not a perfect right, when the witness is in the box, to examine him as to important facts bearing on my view of the case?

Mr. Commissioner COFFEY.—Certainly; but the question is if you are to do it at this stage of the proceedings. We altogether object to mix up the question between the magistrates and Captain Ball with the second portion of the investigation which we have to inquire into; and what we propose to do is to reserve you liberty to recall Captain Ball and ask him any questions that you consider necessary for your case as soon as we have terminated the first branch of the inquiry.

Mr. *McLaughlin*.—Of course I am altogether in the hands of the Court, and, within certain limits, I am to do what the Court directs; but I would simply draw this under your attention, that it is one thing to ask a man certain questions at a distance of time from his direct examination, and another thing to ask him those questions while the evidence he has given on his direct examination is fresh on your memory. I have no right whatever to examine or cross-examine him with reference to the matters with which Captain Ball is specially connected, and I don't intend in any way to connect myself with that, but I am here to impugn deliberately the conduct of the magistrates, and of the police, in sustinment of the charges of the memorial. Now the foundation of the justification—for so we may well phrase it—that the magistrates will make, is the extent to which they differ from the opinion of the law ad-

viser; and I wanted while this gentleman is in the box, and the facts to which he deposes are fresh in your memory, to draw your attention to what I conceive is the mistake of the magistrates, and to show that the opinion of the law adviser is right; and also to draw attention to certain proceedings of the magistrates when they refused to allow questions to be put, the effect of which was to mislead the law adviser in the opinion which he gave. I think it would be only fair that I should be allowed to do that now; but I am altogether in the hands of the Court.

Mr. Commissioner EXHAM.—Mr. M'Laughlin, it would be far more convenient now that the first branch of the inquiry, that is, with reference to what is stated in the evidence of Captain Ball, should be closed; and then you shall have the fullest opportunity of asking questions.

Sergeant *Armstrong*.—I may state that in obedience to the orders of the Court, particulars were furnished last night, to a considerable extent, going back several years as to alleged misconduct of the magistrates, or inactivity, rather; and they contained no suggestion of any misleading of the law adviser. That question is perfectly new; I never heard of it before.

Mr. M'Laughlin.—I shall deal fairly with my friend the Sergeant, and refer him to the particulars of what occurred on the 23rd of April, 1869, in connexion with the breaking of the chapel windows, and the windows of the house of a man named Houston, by the Orange party. That is simple enough. Now I have before me the report of the inquiry.

Mr. Commissioner COFFEY.—If you are going to rely on this it is very easy to give notice of it now if it is not already stated in the bill of particulars.

Mr. M'Laughlin.—Very well then, I formally give notice to the Sergeant.

Sergeant *Armstrong*.—Give it in writing, for I cannot recollect everything.

Mr. M'Laughlin.—I will not do it in any other way.

133. Mr. Commissioner EXHAM.—Captain Ball, I want to ask you about that opinion of the law adviser. I think you said it went to Newry first?—Yes, I did.

134. Was it given with regard to the case of Dungannon at all, or with regard to something that occurred elsewhere?—From something that occurred in Newry the resident magistrate there considered it necessary to report the matter to the Castle. He got this in reply. The same—at least, I don't say the same—but certain circumstances occurred here that rendered it necessary also to apply to the Government, and that was sent down to me with those directions on it.

135. Mr. Commissioner COFFEY.—Who was the chairman of the petty sessions on that day?—Mr. Hamilton.

136. You, I presume, had given it to Mr. Hamilton?—Yes, I believe I gave it to Mr. Newton and Mr. Newton handed it to Mr. Hamilton. That is my recollection.

137. You spoke about a transaction in which a boy was beaten, and one of the persons who did it was ultimately imprisoned for two months. Was that an isolated transaction or one in connexion with a drumming party?—No, it was not in connexion with a drumming party.

138. It was an isolated transaction?—It was.

139. Now, I understand from your evidence, that the reason which induced you to give that opinion in your evidence on the police inquiry was, first, that transaction, and next the circumstance of some little disinclination or inactivity or want of cautioning the public when they were here in court, which induced you to express yourself as you did?—That, and also the fact I mentioned with regard to having had letters and communications verbally.

140. That produced the impression on your mind; but you yourself, as I understand, never did intend to convey that you supposed the magistrates were wilfully acting in disregard of their duty, or acting with partiality, or acting with corruption?—No, I did not.

Sergeant *Armstrong*.—He did not suggest that the

opinion should be read when the Court was full of people.

Mr. Commissioner COFFEY.—It certainly was sent down for the purpose of being read publicly.

Sergeant *Armstrong*.—So it was.

Here the examination of Captain Ball by Mr. Barry closed.

Mr. Commissioner COFFEY.—I presume that, so far as Captain Ball is concerned, his part of the case terminates with his own evidence.

Sergeant *Armstrong*.—I suppose it does. I don't consider at present that I have anything to answer, or any apology to offer, or any explanation to suggest. I never heard anything more candid than the explanations given by Captain Ball; but the idea of drawing any inference unfavourable to the magistrates from his evidence is out of the question. Until I am accused I will not answer anything.

Mr. Commissioner COFFEY.—Then, if convenient we will now take up the second part of the inquiry.

Mr. M'Laughlin.—Very well, sir. Go into the box, Captain Ball.

Captain Alexander Francis Ball, R.M., examined by Mr. M'Laughlin.

141. When did you first come to Dungannon for your sins?—Two years ago next month—about a year and eleven months ago.

142. Who are the magistrates who generally attend the Dungannon bench?—Well, Mr. Courtenay Newton.

143. I will assist you by reading the names?—I know the names.

144. Does Mr. Courtenay Newton generally be there?—Yes, he does.

145. Does Mr. Nicholson generally be there?—Well, no; at least not for this last—I think I may say now for nearly six months, to the best of my recollection, he has not been here.

146. Does Mr. Stanley be there occasionally?—Occasionally—yes.

147. I suppose Mr. Mackenzie Lyle is not always there?—No he is not always there.

148. Is Mr. Thomas Hamilton the gentleman who read the law adviser's opinion to a full house of three generally there?—Not generally. He is there sometimes.

149. Mr. Burges—whose Christian name is difficult to pronounce—does he be there on occasions?—Yes.

150. Not very often?—Not very often.

151. Mr. Courtenay Newton, who resides in the neighbourhood, is about the most general attendant at petty sessions?—Well, I think there are, I may say, four or five magistrates there besides myself. There are a good many residing in the neighbourhood.

152. Does Mr. Richardson often be there?—I would not say often. He is there sometimes.

153. Are these drumming parties which have been spoken of a common thing in Dungannon?—Well, I think on Friday night it is almost certain that one occurs.

154. Every Friday night?—Yes. Oh, well, not in the middle of winter. They do sometimes.

155. But if the weather be favourable they are ready on Friday night?—They generally are, I may say, on Friday. They generally do play on Friday night.

156. At what time of the night do they generally go out?—Oh, I declare I could not say that. Sometimes it is about as early as seven o'clock, or even a little before it; at other times it is later. I have heard them up to a pretty late hour of the night; I think I have heard them up to eleven or twelve o'clock.

157. Do you happen to know whether the parties composing these drumming processions are all of the one persuasion; I believe there is no doubt about it?—Well, I can only imagine that they are. Of my own knowledge I do not know.

158. I believe all the gentlemen whom I have named happen to be of the Protestant persuasion?—Oh, undoubtedly.

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159. Undoubtedly ?—Well I don't know. Let me see. Probably there is one gentleman who is not.

160. Is that yourself ?—No, because you did not mention my name.

161. Well, I may tell you further that I did not mention the name of any Catholic magistrate ?—No, because he does not sit here at all. I did not allude to that. I alluded to another gentleman altogether. I may be mistaken.

162. During those two years you have been discharging your duties actively in Dungannon ?—Whenever I could do so. I have been away twice on sick leave.

163. Do you know whether or not those drumming parties are regarded with feelings of satisfaction or dissatisfaction by the Roman Catholic portion of the community ?—With dissatisfaction undoubtedly.

164. Is it a weak or a strong dissatisfaction that they feel ?—Well I would say a strong dissatisfaction.

165. Have you ever been apprized by the inhabitants, or by any portion of them, of the existence of a feeling of strong dissatisfaction with regard to drumming parties ?—I have.

166. Repeatedly, I suppose ?—Yes.

167. Do you as a magistrate, regard those drumming parties as calculated to excite alarm in the minds of the people who disapprove of them ?—Well I do.

168. Do you regard them, according to your estimation as a magistrate, as calculated to produce any danger to the tranquillity and peace of the neighbourhood ?—I think so.

169. You think ! Is there any other sane man except the magistrates of any other opinion ?—I don't say that the magistrates are insane.

170. I did not say it either ; I must be polite occasionally ; but do you think they are calculated to lead to breaches of the peace ?—I say they are. That is my judgment—my opinion.

171. I believe you have the misfortune to agree in opinion with the Law Adviser of the Crown that these proceedings involve an indictable offence at common law, for misdemeanor—I believe you agree in that ?—Well, that was the opinion I had entertained. If I may make an observation with regard to that, I think there has been an opinion given by Chief Justice Monahan in a charge which he delivered the other day, during the last assizes at Monaghan, which lays down the law much more clearly than the Law Adviser, and is, I should say, a better opinion.

172. Yes, he is a man of more or less authority—the Chief Justice of the Common Pleas ?—But, however, that is not officially before us.

173. Mr. Courtenay Newton does not agree, I believe, with the Law Adviser ?—Well, I am not prepared to say that now.

174. Did you hear his letter read ?—I don't think I did.

175. Sergeant *Armstrong*.—You have that opinion upon his letter ?—Yes.

176. Mr. *M'Laughlin*.—You heard that letter read ; and though you lost the original, it was a fair copy ?—I believe it was.

177. You observe in that letter that Mr. Newton goes somewhat metaphysically into the question and comes to a conclusion adverse to the conclusion arrived at by the Law Advisers ?

Sergeant *Armstrong*.—That is not accurate, with great respect to you.

Mr. Commissioner *COFFEY*.—It makes no matter, for the document is there.

Mr. Commissioner *EXHAM*.—You shall have a copy by-and-by.

178. Mr. *M'Laughlin*.—I would have expected that a person of Mr. Newton's long training would have kept right—I am wrong, perhaps. (*To witness*.)—Do you agree with this opinion of Chief Justice Monahan ? He says, "If any number of persons entertain a respect for any event of former times or for any event of modern times, there is no objection to their celebrating that in the ordinary way by marching with drums, provided only that their so doing is not productive of

ill-feeling and not calculated to produce a breach of the peace. It is perfectly right and proper for a number of men to associate and to walk together in celebration of an event of that description so long as others don't take offence at it ; but when once from the nature of the case it becomes offensive to others, and the parties taking part in such celebrations know that they are offensive and will produce ill-feeling and probably tend to a breach of the peace, I think such assemblies, no matter how innocent originally, are illegal and unjustifiable." I believe you agree with the Law Adviser and the Lord Chief Justice ?—I do.

179. Suppose you were inquiring, Captain Ball, into a charge of unlawful assembly connected with drumming parties and the like, would you think it a right thing to ask a witness whether such assemblies tended to endanger the public peace or provoke ill-will—would you think that a legitimate question to put ?—I should decidedly.

180. Were you here in May, 1869 ?—No, I was not.

181. Then you were not here when the bench ruled that such a question should not be put ?—No.

Sergeant *Armstrong*.—This is most irregular.

182. Mr. *M'Laughlin* (*to witness*).—You have already sworn in answer to Sergeant Armstrong, that you had nothing to do with getting up the memorial ?—Yes, I have.

183. Do you know whether or not, in consequence of the prevalence of drumming parties unprevented, and in consequence of other matters, the local public here of the Catholic persuasion have confidence in the local magistracy ?—I could only judge that by inference. I should say that they have not, judging by what I have already alluded to in my examination.

184. That is a prevalent opinion, right or wrong ?—Yes.

185. That they don't get what they would like in the way of justice. Now, does the feeling prevail or does it not prevail—as to the foundation of it I say nothing—that the magistrates lean with undue partiality to the Orange party ?

Sergeant *Armstrong*.—I really think, sir, that unless this is based on some matter of fact—

Mr. Commissioner *COFFEY*.—I think it would be infinitely better, Mr. *M'Laughlin*, if this matter be capable of proof, to get parties here who entertain those opinions, and let them state them, and give their reasons.

Mr. Commissioner *EXHAM*.—Their reasons for it ? That is just it.

Mr. *M'Laughlin*.—I will only tell you that I took the trouble, in the discharge of my duty, of wading through 200 pages of the Belfast Commission Report, an inquiry which was carefully conducted by the present Attorney and Solicitor-General, then Queen's Counsel ; and I find that a vast body of evidence disclosing opinions prevailing as to the local magistrates and the police was there given by persons who gave it because they knew the state of the public feeling.

Mr. Commissioner *COFFEY*.—Within certain limits we are not prepared to lay down this, that we won't allow evidence to be given of what may or may not be notorious in the locality ; but that is to be arrived at, as I consider, by other means than by that way of examining Captain Ball.

Mr. *M'Laughlin*.—I may be wrong, but the reason I press a little on it is, that if I am stopped on this part of the inquiry I would be inclined to prophecy that the inquiry won't be of any great length as far as I am concerned.

Mr. Commissioner *COFFEY*.—I should not regret that if the public time be spared ; but I cannot conceive, if you are in a position to give direct evidence that it is a proper course for you to pursue to give indirect evidence.

Mr. *M'Laughlin*.—What I mean to convey is, that following the precedent that has been set, I have been able to consult persons who have a perfect knowledge of the locality, and who know the feelings of persons that can be presumed to be affected by prejudice ;

and, independent of that, it has always been allowed on these inquiries, to give information as to what the feeling of the people is, *quoad* the magistrates and the police.

Mr. Commissioner EXHAM.—With regard to Belfast, Mr. M'Laughlin, you may recollect that a great portion of the inquiry there was as to specific acts proved against members of the Constabulary, and even against some of the heads of the Constabulary as contradistinguished from the ordinary members of the force. For instance, you recollect that statements were made there with regard to their actually joining in certain processions and taking part in them, and things of that kind. These were the specific acts proved; and then it was proved that that was done publicly in the face of the people, and the inference asked to be drawn from that was, "What did the people think when they saw the police guarding a procession of the Protestant party and joining in it?"

Mr. Commissioner COFFEY.—Beyond that Captain Ball has already given evidence of facts, and these facts are that he has got communications verbally and by letter from numbers of persons asking him to be present at the Petty Sessions, as they had no confidence in the magistrates. That is matter of fact. That is evidence.

Mr. M'Laughlin.—I may only say in answer to what has fallen from Mr. Exham, that I have carefully gone over the report of the Belfast inquiry, and I find questions, some of which were put by Mr. Exham himself.

Mr. Commissioner EXHAM.—No doubt about that; but several of these questions were asked after specific acts had been proved over and over again.

186. Mr. M'Laughlin.—I will produce a host of testimony. (*To witness*).—Do you think, Captain Ball, that it would be desirable in the interest of the public peace, and for the sake of local tranquillity, to put down these drumming parties?—I do.

187. Have you seen, on the part of the local portion of the Constabulary, sufficient energy in putting down those assemblies that you conceive to be dangerous to the public peace?—Sufficient energy shown?

188. Yes. Have the police exerted themselves?—I don't think they did.

189. Do you think that, having regard to the numbers of the local police, there would be any difficulty in preventing those drumming parties if they resolved to do so?—

Sergeant Armstrong.—I am not aware that there is any inquiry as to that.

Mr. M'Laughlin.—There is decidedly. Refer to the last paragraph of the memorial.

Sergeant Armstrong.—I am satisfied if it be so.

Mr. Commissioner COFFEY.—It complains of these constant drumming parties invading Dungannon—to put it in a strong way. I require very little or no evidence whatever to satisfy me that if the local police want to put them down, and if they chose to summon the parties, they have it in their power to do it. Of course they know the people that compose them; and if they don't they are not fit for their business.

190. Mr. M'Laughlin.—(*To witness*).—Has Sub-Inspector Smith been stationed here since you came?—He has.

191. And before it?—Certainly.

Sergeant Armstrong.—Now, there is a marked distinction to be taken between the allegation that the magistrates were inactive and the question of the inactivity of the police or any omissions on the part of that body; and I want to understand whether we are going into an inquiry as to the inactivity of the police? Is it open to you under the terms of the warrant to go into the whole conduct of the police, because I don't object to it?

Mr. Commissioner COFFEY.—This memorial has been referred to us, and we are directed by His Excellency's warrant to investigate the statements contained in it. One statement in it is, that the people of the town and locality are in terror from the constant practise of these

parties coming into the town drumming. Well, a portion of that inquiry necessarily must be, how long this has been going on, why it is allowed to continue, and what steps have been taken to prevent it.

192. Mr. M'Laughlin.—(*To witness*).—Is the same head-constable here who was here when you came?—Yes, he is.

193. Are there many of the ordinary members of the force, that is, constables, acting constables, and sub-constables, here who were here when you came?—No.

194. Any?—Oh, any

195. Any or many?—I am not sure, but I don't think there are; I think only very few that were here when I first came. You mean, I presume, in the town of Dungannon?—

196. I am talking of the town of Dungannon. Now you were asked some time ago whether or not it was the duty of a magistrate to make himself a peace officer: of course it is not the duty of a magistrate to make himself a policeman?—Certainly not.

197. Would you conceive it to be your duty as a magistrate, supposing you found the police, in your opinion, rightly or wrongly to be remiss in the discharge of their duty, to interfere as a magistrate in order to make them do their duty?—Oh, if it was any very flagrant breach of their duty I should do so.

Sergeant Armstrong.—Allow me to make this observation. The Court has advanced the opinion, from which I don't presume in the slightest degree to dissent, that an inquiry into the conduct of the police is involved in the terms of this memorial. I don't see how you can exclude it; but it is remarkable that up to the present moment no person connected with the police has got any intimation of this inquiry or has been called on to appear here.

Mr. Commissioner EXHAM.—I have been mentioning that to Mr. Coffey.

Sergeant Armstrong.—I think that at least the sub-inspector and the head-constable in charge of the town should now have such an intimation officially from the bench as will make them parties to this inquiry; for it will be a very awkward thing to have references made affecting them, as will in all human probability occur, without having them distinctly before the Court. I speak as to the regularity of the proceedings.

Mr. Commissioner EXHAM.—For myself I may say that when I read the warrant and the memorial, knowing from these and other papers that there had been already at the instance of the police authorities themselves an investigation with regard to charges against the sub-inspector, I really was under the impression that this inquiry was confined strictly to the magistrates alone, and that we were not to inquire into the conduct of the constabulary; and certainly, acting on that we did not give notice to Mr. Smith or any other member of the constabulary, which in common fairness we would have done if we thought their conduct was to be inquired into.

Sergeant Armstrong.—What I would suggest in order to put all parties right is, that an intimation should be given to the sub-inspector and the head-constable that this inquiry is now proceeding, and that they ought to take notice that they will be heard if they desire it. I say that for the sake of the magistrates, for I am not going to defend the police at all.

Mr. Barry.—It comes entirely by surprise on me.

Mr. M'Laughlin.—It comes upon me from reading the memorial.

Mr. Commissioner EXHAM.—I confess, Mr. Barry, that it comes completely by surprise on me too.

Mr. Commissioner COFFEY.—There certainly is, as it strikes me, this inconvenience and apparent injustice in going into specific charges against the police.

Mr. M'Laughlin.—That I don't undertake to do.

Mr. Commissioner COFFEY.—That if they have no notice of it they are not called on to take part in the inquiry; but I understood the object of this to reflect not so much on the police as on the magistrates who suffered such things to continue without having taken

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the necessary steps to direct the police to have those parties identified and summoned before them. In no other way will I take this evidence. I will not take it as a specific charge against the police at all.

Sergeant *Armstrong*.—When I asked the name of a constable, the Court stopped me. Now I must cross-examine Captain Ball, and insist on knowing the name of the policeman.

Mr. Commissioner *COFFEY*.—It is quite impossible that we can shut out the facts—quite impossible—because the warrant says—“Whereas divers of the inhabitants of the said locality have presented their memorial to us, praying that an inquiry might be had into the manner in which the law has been administered in the said locality, in reference to the proceedings of certain parties, alleged by the said memorialists to have created animosity, and endangered the public peace, and to have committed breaches of the peace in the said locality.” All that is within the scope of our inquiry.

Mr. Commissioner *EXHAM*.—No doubt at the inquiry at which Captain Ball gave evidence, and which we have been discussing to-day, I see this very question put, and answer given by Captain Ball. Mr. Smith put this question on cross-examination:—“Did you ever know me to disobey the magistrates?” and Captain Ball says—“Decidedly, in not having the drumming parties, and the prominent actors amongst them summoned.” I take that to mean that he was disobeying the orders given by the magistrates who had given orders to him to do so.

Sergeant *Armstrong*.—I must go into the whole of that now. It is inevitable.

Witness.—May I make an explanation with regard to that point?

Mr. Commissioner *EXHAM*.—Certainly.

198. Witness.—In the hurry of answering questions that I was totally unprepared to answer, when I said the “orders of the magistrates,” I should have said “the orders sent to the magistrates as contained in the opinion of the Law Adviser.” That was what I intended to convey.

199. Mr. Commissioner *EXHAM*.—Yes, but of which, I take it for granted, that the constabulary were informed?—Certainly.

200. Because it was read in their presence?—They were in court, and besides, the sub-inspector had a copy of the opinion.

201. Then, in point of fact, the sub-inspector had the Law Adviser’s opinion, and heard it read in court besides, for the constabulary?—Yes.

Mr. Commissioner *EXHAM*.—Then the charge against Mr. Smith was that he and the constabulary had disobeyed those orders?

Sergeant *Armstrong*.—Most decidedly.

Mr. *McLaughlin*.—Perhaps you will allow me to say a word. I don’t intend to say anything of my own, but if you refer to the last paragraph of the memorial, the whole of which is embodied in the warrant, you find this—“That from the foregoing facts, as well as many others that can be adduced, your memorialists believe that both local magistrates and police authorities here took no effective means to stop proceedings offensive to us, and so dangerous to the peace of this locality; and memorialists therefore pray that your Excellency will order a commission of inquiry into the manner in which the law has been enforced and administered in this town and neighbourhood for several years past.” I think it no exercise of ingenuity on the part of counsel for me to say, that that is of equal application to the police and the magistrates. I take leave to say for myself, that I disclaim any effort to take advantage of any man in a public inquiry like this.

Mr. Commissioner *COFFEY*.—Nobody is accusing you of doing so.

Mr. *McLaughlin*.—It would appear as if I had sprung a mine when I spoke of the police; but it is nothing of the sort, for the following are the exact words of the memorial —

Mr. Commissioner *EXHAM*.—We were only excusing ourselves in not having given notice to the police.

Mr. *McLaughlin*.—It was not my business to do so.

Mr. Commissioner *EXHAM*.—Of course it was not. My friend and myself thought that strictly speaking it was more an inquiry into the conduct of the magistrates than into that of the police.

[The Commissioners then briefly conferred with each other.]

Mr. *McLaughlin*.—Sergeant Armstrong expressly pointed out, or at least insinuated by a question, that the duties of the magistrates with reference to drumming parties only began where the duties of the police ended.

Mr. Commissioner *COFFEY*.—Well, of course that is matter for observation. The course we propose to follow is this:—If you have any further questions having reference to the magistrates only, and relating to facts not involving the police, will you be so good as to put them to Captain Ball and the other witnesses to-day; and in the meantime I will give Mr. Smith an opportunity of consulting the heads of his department, and informing them that this memorial is directed to the conduct of the police as well as the conduct of the magistrates, and that we cannot shut it out from inquiry.

Sergeant *Armstrong*.—That sets everybody right.

Mr. *McLaughlin*.—I beg pardon—it sets everything wrong according to my view, for I cannot separate two things which are in themselves inseparable. I cannot separate the conduct of the police from that of the magistrates in a transaction which involves both. It is impossible for me to do that which I am requested to do by the Court. I have taken no advantage of anyone. There are the words as plain as light; and if the police have not been attending to their business it is no fault of mine.

Mr. Commissioner *COFFEY*.—What we ask you to do is to take the course which fairness and justice demand.

Mr. *McLaughlin*.—How can I do it?

Mr. Commissioner *COFFEY*.—The best way you can. If you fall back on the ingenuity and ability which you possess you will have no difficulty whatever in doing it—not the slightest; and your forbearance is only requested until morning.

Mr. Commissioner *EXHAM*.—And you know perfectly well, Mr. *McLaughlin*, that, putting Mr. Smith out of the case, there are a number of humble men in the force; and it is but right that if this inquiry be pursued with regard to their conduct, they should have some communication with the head of their department in Dublin.

Mr. Commissioner *COFFEY*.—To watch their interests.

Mr. Commissioner *EXHAM*.—I know that we have not given any intimation either to Sir John Wood, who is the head of the Constabulary force, or to the Sub-Inspector here, or to anybody else.

Mr. *McLaughlin*.—I am not putting any forced construction on the matter.

Mr. Commissioner *EXHAM*.—No, certainly not. The only thing is, that I feel now that probably my friend and I ought to have done that; but in reality we conceived that it was more an inquiry into the conduct of the magistrates.

Mr. *McLaughlin*.—I have a shrewd notion of my own; I don’t know if it goes further than the desk in front of us both—that the police are not taken by surprise by anything that has occurred. I observe Sub-Inspector Smith there.

Sub-Inspector *Smith*.—I beg your pardon. I never for one moment thought that those acts of the constabulary would have been brought up, an investigation having been held by the force to which I belong. I never had the slightest idea—I assure you I never had.

Sergeant *Armstrong*.—I think an opportunity should be given to the heads of the constabulary to enable counsel to attend here on behalf of that body; for if you now get into anything at all affecting the constabulary, counsel for them may afterwards fairly ask to have the whole matter gone into *de novo*.

Mr. Commissioner COFFEY.—There can be no objection whatever to give evidence of facts, such as the constant prevalence of drumming parties.

Sergeant *Armstrong*.—There is plenty of work for this day. Let Mr. Smith communicate with the Inspector-General, and counsel may be here to-morrow morning. There can be no harm in that.

Mr. Commissioner EXHAM.—Mr. Smith could telegraph.

Sub-Inspector *Smith*.—It is quite impossible that any communication with the Inspector-General could be answered before two or three days in a case of the kind.

Mr. Commissioner COFFEY.—Why could you not telegraph within half an hour?

Sub-Inspector *Smith*.—That would not be a sufficient communication. There should be a letter in a case of the kind.

Sergeant *Armstrong*.—I know that great routine is observed. They don't do things at a jump.

Mr. Commissioner COFFEY.—As the conduct of the police is to be inquired into—as Mr. M^cLaughlin insists on the right which he possesses under this warrant, to call on us to hear evidence on that subject, we must do one of two things. Either the head of the constabulary department must be communicated with, in order to see if he thinks it advisable to have that force represented here by counsel—which, I say, can be done by telegraph, and ought to be done by telegraph; or if that be not done, and Mr. M^cLaughlin insists on going on with evidence affecting the police force, we must adjourn this inquiry in order to give time to them, because we cannot have charges made against men who are unrepresented.

Sergeant *Armstrong*.—It is very awkward.

Mr. Commissioner COFFEY.—But there is quite sufficient business, having reference to the general aspect of this matter, to occupy us until to-morrow.

Mr. M^cLaughlin.—Yes, but will you kindly allow me to say a word? I have said already, and I don't seem to have impressed the bench with any notion of my sincerity, that it is utterly impossible to separate the conduct of the magistrates and the conduct of the police with reference to these transactions. Now, I take leave to say, in the strongest language compatible with profound respect, that that is so, and that we are prepared to prove that it is so. Will both Commissioners tolerate me for a moment while I show them the grounds of my belief?

Mr. Commissioner COFFEY.—I would rather you would address yourself to the practical subject before us. Admitting now that your argument is sound and capable of no answer from the other side, will you address yourself to the practical question—what are we to do?

Mr. M^cLaughlin.—I really think there is a prevalent mistake as to the grounds of my opinion; and if you will allow me to remove it I think I will do so in a moment. Without going into the exact words of the memorial, I find that reference is made to one specific act of drum-beating where both the magistrates and the police were there jointly. A most carefully and elaborately prepared document signed by Mr. Lyle, and written by Mr. Lyle or somebody else, goes into the facts connected with that, and shows that they acted in conjunction; and thus practically intertwines them in the discharge of their duties, putting apart altogether the official intertwining of their duties, which I say it is utterly impossible to disregard. Now, no man should be condemned in a case like this to study his opponent's convenience; but having said so much, and that my personal interest is altogether in the direction of going on, if the police or the advisers of the police think that there is any taking of them by surprise now—which was perfectly unintentional on our part—I am ready to consent at the hands of the Court to any adjournment of a fortnight, or a month, or any time they like, that is as far as I can do; but as this matter stands before you, upon all the facts at this present moment, as to separating two inseparable things I cannot do it.

Mr. Commissioner EXHAM.—Mr. M^cLaughlin, one thing is certain, that before that memorial was sent stating specific facts, the head of the police authorities had the inquiry about Mr. Smith.

Mr. M^cLaughlin.—I know nothing about that.

Mr. Commissioner EXHAM.—We know it.

Mr. M^cLaughlin.—I know there was such a thing.

Mr. Commissioner EXHAM.—That was an inquiry held under the direction of Sir John Wood as the head of the constabulary force, or at the instance of the Lord Lieutenant. Well, that inquiry has been had. We have nothing to say to the result of that inquiry one way or the other.

Mr. M^cLaughlin.—I deal in particular transactions. We cover a great number.

Mr. Commissioner EXHAM.—I know you do. Still would it be right for us to go on holding an investigation into the conduct of the constabulary, they never having had the slightest notice of it until within the last five minutes?

Mr. M^cLaughlin.—Well, as you ask me, I say that such a result would be unfair; but I never dreamt that they could be in the state of unpreparedness that they now profess themselves to be in. I thought they knew all about these things, and it was no part of our duty to give them notice.

Sergeant *Armstrong*.—I would have been equally unprepared except I got the official notice.

Mr. Commissioner COFFEY.—It arises from some mistake at Dublin. Directions were given to us by letter to communicate with the magistrates and to communicate with the memorialists. There was no direction given to communicate with the constabulary. That may have been overlooked in some way or other.

Sergeant *Armstrong*.—It was overlooked in the direction to ourselves.

Mr. M^cLaughlin.—Nothing more clearly illustrates the *bona fides* of my conduct than this, that in truth a postponement of the inquiry now is a positive wrong to the memorialists, because Captain Ball's evidence stands by itself; I need not describe it or say anything about it; and we have not gone into our case at all.

Mr. Commissioner COFFEY.—No, you have not, but I am suggesting to you, in order to facilitate business, and prevent a break of two or three days, which would be inconvenient to every person—inconvenient to the public servants, and inconvenient with respect to the inquiry itself—that you should go into the general facts and circumstances of your case as far as you can, and reserve until to-morrow any specific evidence you have touching the police, either of misconduct, or neglect of duty or anything of that sort.

Mr. M^cLaughlin.—I can only say, sir, without pretending to be infallible as to judgment or information, that I regard that as utterly beyond my power to do, because the magistrates and the police are equally blamed and almost at the same moments of time—in the transactions before the Court both parties are engaged.

Mr. Commissioner EXHAM.—Suppose that upon the evidence given here the police and the magistrates are brought *eo instanti* together in some of these transactions, it might be that the police authorities would then say, "We had a right, if represented here, to show that we were acting under the orders of the magistrates, and, therefore were not responsible, even supposing that anything wrong took place."

Mr. M^cLaughlin.—That shows the clear connexion there was between them.

Mr. Commissioner EXHAM.—Of course; and therefore the question is, whether you cannot now separate the cases so as to let us go on to-day or to-morrow.

Mr. Barry.—Perhaps you will allow me to make a suggestion which may have something practical in it? My learned friend says emphatically that it is impossible for him to separate the cases; and I must take it for granted that that is so. That being the case, of course it would be the grossest unfairness to go on with the inquiry in reference to the police without notice given to them. Now,

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a telegram sent at once to the Castle may elicit such a reply as would enable you to decide, even after a short adjournment of, say a couple of hours, whether you should go on with the inquiry or adjourn it for a week. You may find it necessary to do that. You may get a telegram in reply which would enable you to proceed with this inquiry at once or which would show the necessity for an adjournment.

Mr. Commissioner EXHAM.—The difficulty would be, Mr. Barry, to send a telegram which would explain exactly how matters stand, so that the heads of the police force could understand it. The question is, whether it would not be better for us, if we are going to do it at all, to adjourn until Monday, so that then the parties would be amply prepared. It must be very inconvenient to all of you.

Sergeant *Armstrong*.—I would like to say a word to you, before you do anything in reference to this warrant.

Mr. Commissioner EXHAM.—Certainly.

Sergeant *Armstrong*.—Some question of construction and scope of authority does arise upon it. It recites, in the first instance, the holding of this court of inquiry with reference to Mr. Smith; it recites the fact that Alexander Ball, esq., resident magistrate, was duly summoned and gave evidence at that inquiry; it recites that the magistrates—naming them—acting as justices of the peace for the petty sessions district of Dungannon, have complained that certain charges were made by the said Alexander Ball in his said evidence which affect the personal honour of the magistracy and the administration of justice—and I will call your attention to that expression—in the said locality, and have demanded a public inquiry into the conduct of the magistracy in relation to the said charges. So much for the solicitation of the magistrates. Then it opens a new head of inquiry and goes on to say, “and whereas divers of the inhabitants of the said locality have presented their memorial to us praying that an inquiry might be had into the manner in which the law has been administered”—clearly one would say *ex vi termini*, that that referred to the magistrates alone—“in the said locality, in reference to the proceedings of certain parties alleged by the said memorialists to have created animosity and endangered the public peace”—that mainly points to the drumming parties. Now the warrant says, “praying that an inquiry might be had into the manner in which the law has been administered.” That is the construction which the executive has put on the prayer of the memorial. The prayer of the memorial itself says, “Memorialists therefore pray that your Excellency will order a commission of inquiry into the manner in which the law has been enforced”—pointing to the constabulary, “and administered in this town and neighbourhood for several years past.” It was quite open to His Excellency to grant the prayer of that memorial wholly, or in part. Now, what occurs to me to suggest to the bench is this. The warrant states that the memorialists had prayed that “an inquiry might be had into the manner in which the law has been administered.” The word “enforced” pointing to the constabulary, is omitted by the Executive in the warrant, and I should say, perhaps designedly omitted; and then when we come to the conclusion of the warrant we find this: “Now, we do nominate and appoint you, William Allen Exham and James Charles Coffey, esquires, two of Her Majesty’s counsel, to be Commissioners to investigate and inquire into the several matters aforesaid.” Whether the words “several matters” opens the door to everything stated in the memorial is a serious question; and it does not appear to me that it does, because you find that it is not the subject-matter of the memorial at large that is referred to you, but an inquiry “into the manner in which the law has been administered in reference to the proceedings of certain parties” who are said to have disturbed the peace. Afterwards the warrant says “to investigate and inquire into several matters aforesaid,” that is, how the law has been administered, and whether

the honour and character of the magistracy is affected. The “enforcement of the law is omitted and perhaps not without meaning.” The warrant says that “for that purpose you are to hold an inquiry at the court-house, Dungannon, on Wednesday, the 10th August, and thereafter so long as may be necessary.” A further reason from narrowing this inquiry into one relating to the magistrates only, is that there is actually pending an inquiry into the conduct of the constabulary, wholly or in part. It would be a strange thing to overlap that, I believe, undisposed of inquiry, which may be re-agitated at any moment and is not finally closed yet, by any investigation here; and therefore, gentlemen, I respectfully ask you to look narrowly at the construction and operation of the curial part of the commission before you decide this question.

Mr. *McLaughlin*.—I would ask the Commissioners to read the *Gazette* notice.

Mr. Commissioner COFFEY.—I don’t mind that at all, because that was drawn by ourselves.

[The Commissioners then retired to consult. On their return into court].—

Mr. Commissioner EXHAM said—Mr. *McLaughlin*, we have given this matter the best consideration in our power—

Mr. *McLaughlin*.—Do you think it necessary that I should say a word in answer to Sergeant Armstrong before you pronounce your decision?

Mr. Commissioner COFFEY.—Yes.

Sergeant *Armstrong*.—My only wish is, and let there be no mistake or misconception about it, that everyone should be fairly represented.

Mr. *McLaughlin*.—What I have to say is this. The words of the memorial are clear and plain, and I don’t intend to repeat them. The last paragraph of the warrant orders an inquiry into the “several matters”—in the plural—“aforesaid.” According to the contention of the other side, this is the state of facts. Drumming parties are continuous. The magistrates not being peace officers are not bound themselves to prevent them. The persons forming those parties have not been arrested, and therefore if we are excluded from inquiring into anything except the conduct of the magistrates, there would be nothing to inquire into. The only duty of the magistrates was to inquire into breaches of the peace caused by drumming parties, the members of which never were arrested.

Mr. Commissioner COFFEY.—I am not prepared to accede to that argument at all.

Mr. *McLaughlin*.—And as it is impossible for me to separate the conduct of the police from that of the magistrates, I would ask an adjournment.

Mr. Commissioner COFFEY.—We will grant no adjournment.

Mr. Commissioner EXHAM.—We have considered this matter, and there is very great force in the construction which the learned sergeant asks us to put on the documents; and there is another document which fortifies us in the course which we are about to take. We can’t shut our eyes to the way in which this inquiry came forward. It came forward on the application of the magistrates, who say that charges have been made against them of a twofold nature—charges in the evidence given by Captain Ball at a certain inquiry, and charges contained in a certain memorial; and the magistrates called for an investigation as to the manner in which the law has been administered by them, and into that which has been made the subject-matter of complaint. The memorial, too, goes on to complain of the conduct of the police. His Excellency might have granted an inquiry into the conduct of the police, as to the way in which they enforced the law, as well as he did into the way in which the magistrates have administered the law. His Excellency has not sent us a warrant to inquire into the memorial generally; but His Excellency has sent a warrant to us of a limited nature, and accompanying that warrant, and sending it to us, is the following document:—“Dublin Castle, 10th August, 1871. Gentlemen,—I am directed by

the Lord Lieutenant to transmit herewith His Excellency's warrant appointing you to hold an inquiry into"—what? "Certain charges which have been preferred against the magistrates of the Dungannon petty sessions district. I am also directed to enclose a file of papers in connexion with the case." What case? The case which he grants us the warrant to investigate; and what we are to investigate is what is stated here, namely, the "charges which have been preferred against the magistrates of the Dungannon petty sessions district." It is not even extended to the magistrates of the county of Tyrone at large, but is pointed to that particular magistracy. "I am desired to request that you will give due notice to the several parties concerned, of the time and place at which the inquiry is to be held, in the case of the magistrates making your notification through Alexander Mackenzie Lyle, J.P., Donoughmore House. Yours, &c., Thomas Burke." Who were the parties that we were to give notice to with regard to the matter which His Excellency's Under Secretary mentions in this letter enclosing the warrant to us? The persons who are interested in the charges which have been preferred against the magistrates of the petty sessions district; and who are they? They are Captain Ball, in respect of the evidence given by him; and the memorialists in respect of the charges made against those local magistrates in that memorial. These were the persons who were to receive that notice from us. Accordingly what we did was this. We gave a notification to Captain Ball; we gave a notification to the magistrates through Mr. Lyle; and we gave notice to the four first persons, I think, whose names are in the memorial. We gave that notification to them of the holding of this court of inquiry; and as far as we can judge from the term of the warrant, and of the letter enclosing it to us, I think it never was the intention of His Excellency to give a warrant to us enabling us to go into the question as to the conduct of the police force in enforcing the law in this town and district. But Mr. McLaughlin is not for a moment to suppose that we are going to shut out all fair inquiry. We are not; because, in the course of the evidence which he gives, it will be open to him to show that the magistrates have neglected their duty; and it would be a neglect of their duty if they did not give proper directions to the Constabulary for the purpose of having the law carried out and administered. That would be non-administration of the law on their part and good matter for inquiry. Again, supposing it should be proved to us that the magistrates were present when these drumming parties were going on, and that the Constabulary were with them, and that the magistrates then did not call on the Constabulary to act as they should, or that the Constabulary refused to act, and the magistrates did not report them; that would be non-administration of the law, or mal-administration of the law, and a proper subject for inquiry. What we, therefore, propose to do, is to include everything in which the magistrates were concerned as far as not giving proper directions to the police for preserving the peace of the town, and preventing breaches of the peace that were likely to occur from these drumming parties, while going on; and everything in respect of which after the drumming parties went on, the magistrates did not administer the law, that is, if the police did their duty and the magistrates did not do theirs; of course we will have all these matters fully investigated; and in that way it will become necessary to have the names of the police introduced in those several instances; though we do not think it within the scope of our inquiry, even though we should be of opinion that the police pretermitted their duty in that respect, to make any report to his Excellency with regard to the conduct of the police in this matter, because it is not made a subject of inquiry by us. But I don't see—and I understand my friend Mr. Coffey to agree with me—that this will throw any difficulty in the way of Mr. McLaughlin, because he can give evidence connected with the conduct of the

magistrates either in non-direction of the police, or in improper direction of the police, or in not seeing that the police performed the duties that they were directed by them to perform; or, if the police did perform their portion of the duties, evidence of the magistrates not having done their duty afterwards in administering the law by punishing the parties brought before them. Or, again, if the magistrates, suppose, gave directions to the police with regard to summoning parties who were known; or if there be reason to say that the magistrates did as much as they could by giving directions, then it would become a question with regard to the conduct of the police in not carrying out specific directions; and we think that that is not within the scope of the inquiry referred to us, and therefore, with regard to any specific charges against the police in not carrying out the directions of the magistrates, we cannot go into that. But we have the fullest authority to go into, and will go into, all questions which Mr. McLaughlin chooses to raise here, and all evidence that he proposes to give to show that the magistrates did not do their duty in either giving instructions to the police, or in seeing that the police carried out those instructions if given, or in administering the law afterwards in cases in which the police did carry out the instructions of the magistrates. Now I hope that on this point there will be no misconstruction whatever; and we do not see any substantial difficulty in the way of having the conduct of the magistrates investigated in the most full and thorough and searching way we can do, and which we engage to have done on this occasion with regard either to misfeasances or neglect of duty by standing by and not administering the law after the police had done theirs.

Mr. Commissioner COFFEY.—So far as I am concerned, I wish that there shall be no misconception as to the grounds of my opinion. I am deliberately of opinion, on reading this document carefully over, that we have no authority whatever to inquire into misconduct on the part of the police, except in so far as it reflects on the misconduct of the magistrates; but whenever the police are brought into contact with the magistrates, or wherever their conduct reflects on the magistrates for not acting in the performance of their duties, or remaining inactive when they ought to have been active, we have full authority and are bound to go into every one of those cases. There is not a circumstance mentioned in this memorial or specified in it that we have not authority to go into, and that it is not our duty to go into. We must do that. But we are not here for the purpose of forming or expressing any opinion on the misconduct—if misconduct there be—of the police. For myself individually I say that if the case be that these drumming parties were perpetually coming into Dungannon and alarming the peaceable inhabitants, and creating apprehensions of a breach of the peace, in my humble judgment it does not reflect so much misconduct on the part of the police as on that of the magistrates if they remained inactive, and took no steps by direct authority and by direct communication with the police, to put a stop to those scenes of disturbance. Therefore, with respect to the matters mentioned in the memorial, we are prepared to hear any evidence that may be offered—we are prepared to hear evidence upon every single transaction connected with drumming parties which came to the knowledge of the magistrates, and in which they did not act—we are prepared to hear the evidence against them, and on the other hand the explanations of the magistrates with regard to those transactions. Therefore what we will do is this: we call on the memorialists now to proceed with their inquiry, and we are ready to hear any evidence that they choose to offer; and with respect to any questions that may arise on the production of evidence, and upon the answers to questions, we will determine each of these as it arises.

Mr. McLaughlin.—Well, representing the memorialists as being the parties affected by the decision of the court, it is respectful to the court and due to my

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own clients to ask the court to adjourn for an hour. I have very little doubt as to the course I shall take ; but respect for the court and for my own clients dictates the request I now make ; and inasmuch as the bench have given an opinion to some extent in conflict with the opinion which they had before formed I should be allowed—

Mr. Commissioner COFFEY.—Don't assume that, Mr. M^cLaughlin, because it is not correct to assume it. What we did was to listen to the arguments ; and when we come to decide we have to consider that charges were to be brought directly against the police of misconduct, we must do what every court of justice ought to do, namely, take care that there shall be no surprise upon the parties implicated by those transactions.

Mr. M^cLaughlin.—Very well ; and in order that there may be no surprise upon my clients, will you allow us to adjourn for an hour ?

Mr. Commissioner COFFEY.—Certainly.

Sergeant *Armstrong*.—I did not understand the court to indicate any decision inconsistent with what they are now doing.

Mr. Commissioner COFFEY.—Certainly not.

Sergeant *Armstrong*.—I think nothing can be clearer than the rule you have pronounced.

Mr. Commissioner EXHAM.—We will be back, Mr. M^cLaughlin, at two o'clock, and that will give you an hour and ten minutes.

The court then adjourned.

The court having resumed at 2 o'clock,

Mr. M^cLaughlin said—I think it right, gentlemen, to mention the conclusion at which I have arrived consequent on the decision come to by the Commissioners, previous to the adjournment which they were kind enough to grant me, that they did not regard this so much a police inquiry as a magisterial inquiry. I was under the impression that the Commissioners wanted to shut out all reference to the police absolutely, however indispensable that reference might be. I was also under the impression that, according to such a ruling it was utterly impossible for me to separate the police from the magistrates in this business. But the decision of the Commissioners as interpreted by the explanatory comment with which Mr. Commissioner Exham first, and Mr. Commissioner Coffey afterwards respectively accom-

panied the announcement of their decision, relieves me from the position of embarrassment that otherwise I would be placed in. As I understand it, the decision is substantially this : That no charge is to be made against any policeman by name ; that no specific charge is to be made against any policeman either in his official or other capacity, and that consequently the Commissioners will be absolved from the necessity of reporting on the conduct of the police, but that in the inquiry the conduct of the police with respect to the existence of these drumming parties so far as the intervention or non-intervention of the police reflects back on the conduct of the magistrates is open to me on this inquiry.

Mr. Commissioner COFFEY.—Certainly.

Mr. M^cLaughlin.—That being so it would be almost affectation in me to conceal from the bench that I feel I am placed in a very different position from that which I understood I was placed in when the announcement from the bench was first made. That being so, I am very happy in being in the situation of being able to go on with this inquiry.

Mr. Commissioner COFFEY.—With respect to the observation that fell from me you are quite right in supposing that in the early part of the decision I was under the impression that this warrant and memorial taken together did authorize us to go into the conduct of the police.

Mr. M^cLaughlin.—I assure you I did not intend to misrepresent the effect of what you said.

Mr. Commissioner COFFEY.—At the same time, when the matter came for decision, Sergeant Armstrong having very kindly as a sort of *amicus curiae*, called attention to the specific words of the warrant, and when we had coupled that with the correspondence that occurred between the authorities at the Castle and ourselves, it seemed plain to me that under this warrant we are expressly excluded from going into that question except so far as we have invited attention to—

Mr. M^cLaughlin.—That is not a matter I am called to give any opinion upon. But I am very happy to find that Mr. Commissioner Coffey is sensible of the fact that I did him no injustice by referring to the matter previously.

Mr. Commissioner COFFEY.—Not at all. It was quite right.

Alexander Francis Ball, R.M., was then examined by Mr. M^cLaughlin.

202. I was asking you, at the time the discussion arose that has now terminated, whether you regard these drumming parties as dangerous to the public peace—I believe you said so?—I do.

203. I had also asked you whether or not you thought—I used the word “authorities” in order to avoid referring specifically to any particular branch of the executive—but whether you thought the authorities, if so minded, could prevent these drumming parties—

Sergeant *Armstrong*.—I really think the “authorities” ought to be defined. Be good enough to let me know who are the authorities.

Mr. Commissioner COFFEY.—I declare I don't see any objection to saying the magistrates. Ask him could the magistrates—

204. Mr. M^cLaughlin (to witness).—Do you think that the magistrates, if so minded, could prevent these drumming parties?—Well, I believe they could.

205. You believe they could? Do you know whether most of the magistrates reside in the immediate vicinity of the town, and are well acquainted with it?—Two reside in the immediate vicinity of the town—just outside it, and either one or two live about, I think, two miles away ; another gentleman lives, I believe, about three or four miles away.

206. But the existence of those drumming parties is notorious?—It is.

207. Do you still retain the opinion, Captain Ball,

that they were not interfered with because they were of the Orange party—do you, with respect to the magistrates, still retain that opinion?—I don't think I made use of that observation with respect to the magistrates.

208. With respect to the magistrates?—No.

209. Did you make use of that observation?—My recollection of that is, that it was in answer to a question with respect to the constabulary.

210. You have already pointed to the extent of the magisterial authority?—Oh, I don't think I did ; pardon me—that is not my impression—I don't think I did.

211. But are not the local constabulary, to a great extent under the dominion of the local magistrates as regards the preservation of the public peace?—Oh, yes, certainly.

212. From what you know of the circumstances of this town, do you think that the local magistrates, if so minded, could put down these drumming parties?—I think I have already answered that.

Sergeant *Armstrong*.—“I believe if the magistrates were so minded they could put down drumming parties.” He has stated that already.

213. Mr. M^cLaughlin (to witness).—You mean the local magistrates?—Yes.

214. I believe you are a stipendiary magistrate?—I am a resident magistrate. Formerly we were called stipendiary magistrates ; now we are called resident magistrates.

215. Now I suppose you, as a magistrate—a resident magistrate—have only one vote on the bench?—Certainly.

216. So that a large number of local magistrates sitting with you on the bench would swamp the resident magistrate?—Certainly—two to one would do it.

217. Two to one would be sufficient, so of course six to one can do it. Is it your opinion as a magistrate of experience—a resident magistrate—that these drumming parties should be put down?—Oh, I should say so, decidedly.

218. Why?—Because I believe I have already expressed my opinion that they are most obnoxious, or obnoxious, indeed I might say most obnoxious, to Catholics.

219. There was one occasion I believe in which a drumming party favoured you with a performance in front of your lodgings?—There was.

220. When was that?—The 24th of February last.

221. Can you tell how many people were in it?—I cannot. I did not go out to examine them.

222. I think you showed you were wise there. Did they simply pass by your door marching, or did they stay some time before your door?—I think they stopped at least two or three minutes.

223. You may detach your mind from what you swore before. I am examining you anew now?—Well, it is my impression they remained for about two minutes at least opposite my lodgings, playing away.

224. I see, you say in the evidence you have already given, that in your opinion that was intended to insult you—is that still your belief?—It is.

225. Give your reason for forming that opinion—why should they insult you more than any other magistrate?—Well, I declare I don't know; I cannot give that exactly, unless because I am a Catholic. I don't know any other reason I could give.

That is not a bad reason at all.

Mr. Commissioner COFFEY.—I would say it would be rather defiance than insult.

226. Mr. *McLaughlin*.—No doubt it was partly one and partly the other. (*To witness*)—At all events if they intended to defy you, you did not show any fight—you did not come out?—No indeed I did not.

227. Now, do you remember whether or not before they came to your door, you heard them playing in the vicinity of where you reside?—I did, for I think somewhere about twenty minutes.

228. Dungannon, although it has a number of hotels in it, is not a very big town, and the constabulary barracks, if I don't mistake, are somewhere in the Market-square?—They are.

229. I suppose you had not a monopoly of hearing when you heard these people performing for twenty minutes? Before they came to perform at your door, anyone else could hear them through the town?—I should think so, but I won't be answerable whether they did or not. I only say I should think they did. They must have heard it.

230. Are you aware whether any proceedings were taken to prevent this demonstration on that evening?—I am not aware of it.

231. Did ever you hear there were any arrests made that evening by anybody?—No.

232. Did ever you hear that the magistrates in any way called the attention of the constabulary to that affair?—I don't know that they did. I did not. I did not hear of it certainly.

233. Was there any magisterial condemnation of it at all?—Not to my knowledge. But I might perhaps mention this fact, because it has been referred to rather extensively by some gentleman or somebody in one of the local papers, in a sort of *serio comic*, if I may use the expression, article written on the subject—that for several months after that occurrence, in the month of February, I said nothing about it—and not until June. Well, the fact of it is, I was very unwell at the time it occurred—that was on a Friday, and on

the Monday morning I went away to Dublin and remained away for two months.

234. You were away on sick leave?—Yes, it was utterly impossible for me to take any notice of it.

235. You were in ill-health at the time this drumming party favoured you by playing in front of your door?—I was indeed.

236. Did you not immediately afterwards go away?—That occurred on a Friday evening, and I went away on the Monday morning.

237. On sick leave?—Yes.

238. Two days interfered, Saturday and Sunday?—Yes.

239. I see you were asked this upon the other inquiry—I only say that because it is the easiest way of getting at your evidence.

“To what do you attribute the frequent appearance of drumming parties on the public road?—To want of energy on the part of the constabulary and the well known sympathy of the local magistrates adverse to their doing their duty vigorously by prosecutions in such cases.”

Is that still your opinion?—Well, I think it is in a great measure owing to want of energy on the part of the constabulary.

240. But the absence of energy on the part of any other branch of the executive would call for the presence of energy on the part of the magistrates?—It might do so.

241. I believe that Mr. Courtney Newton is a very prominent man in Dungannon and the neighbourhood, and properly so?—Well, prominent I presume from the position he occupies.

242. But prominent from the position he enjoys as the ablest man in the North of Ireland?—I really don't know. I cannot enter into that, but I won't say he is not.

If you did nobody would believe you.

243. Sergeant *Armstrong* (to witness).—Do you mean mentally or bodily?—Not answered.

244. Mr. *McLaughlin*.—Mentally, bodily, or gastronomically—vocally or instrumentally, having regard to the drumming parties would be more proper?—Not answered.

245. I may ask you this, is Mr. Courtney Newton a man with very considerable influence in the town of Dungannon?—Well, I believe so.

246. And properly so. Did you hear Sergeant Armstrong reading from that solemn communication that was addressed to the Castle about Mr. Newton being with Colonel Stuart Knox?—That referred to a transaction that occurred before I came here, but I heard of that.

247. My object is to bring your mind up to the name of Colonel Knox. He is member for Dungannon?—He is.

248. That being so, I believe he is a gentleman of great influence here?—Undoubtedly.

249. Do you think that Colonel Knox and Mr. Newton, if so minded, could, by the exercise of their local influence, put an end to these drumming parties?—My own impression would be that they could do so.

250. Now, there is a gentleman named Hamilton in the commission of the peace?—Yes.

251. I believe he is a gentleman of very considerable influence amongst some classes of the community?—That, really, I am not able to form an opinion upon. I am not aware of it. I dare say he is. I don't mean to say he is not, but I mean to say I cannot form an opinion myself on the point.

252. Now, how far from this town does Mr. Alexander *McKenzie Lyle* live?—I believe about two miles—at Donoughmore.

253. Is that the place where he sells whisky?—I don't know. I am not prepared to say.

254. I want to know is it his place of business or his residence?—He has a residence at Donoughmore.

255. He has his residence and wholesale public-house in the same place?—I am under the impression he has his stores in Dungannon.

256. Sergeant *Armstrong*.—See, sir; do you say Mr. Lyle has a wholesale public-house?—I don't know

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Sergeant *Armstrong*.—It is to guard against the witness adopting the derogatory description of Mr. McLaughlin.

Mr. *McLaughlin*.—He lives by it.

Sergeant *Armstrong*.—Don't say he has a wholesale public-house in Dungannon.

Mr. Commissioner *Coffey*.—I don't understand the witness as at all adopting Mr. McLaughlin's language. He said he (Mr. Lyle) had his place of business in Dungannon.

257. Mr. *McLaughlin* (to witness).—We will suppose, in order to be entirely away from the sore point, that he is a watchmaker and jeweller, and that he has a place of business of some description?—I cannot say whether he has or not. I believe so.

258. My question then is—does he reside in the same place where he carries on his business?—No, certainly not.

259. Where does he reside?—I wish to say I don't know where his place of business is. My impression is that it is in the town of Dungannon—it may be a store; but I know his residence is Donoughmore House, about two miles from this.

260. Two miles away from this?—Yes.

261. That is the nearest town to Dungannon? The nearest town?—Yes. Donoughmore is a village —

262. Very well. Now, Captain Ball, have you observed, since the month of June last, any very strong desire on the part of the local magistrates to assist you in the administration of the law, or have you observed the reverse in any degree?—I don't exactly understand the gist of that question.

Sergeant *Armstrong*.—I don't wonder at it in the least. If there is any fact to be stated, I will be very glad to hear it; but unless there is some fact, no man can afford to have his character affected in a wholesale manner—

Mr. *McLaughlin*.—I am not seeking to affect his character in a wholesale manner. I ask this gentleman, Captain Ball, a question on which I will ask the ruling of the commissioners.

Sergeant *Armstrong*.—It is a question calculated to lead to prejudice and dissatisfaction.

Mr. *McLaughlin*.—The Sergeant asked this gentleman whether the magistrates acted with him in cordial harmony and efficient co-operation. I ask him the same question, with an addition, if I may say so, to it. Am I not entitled to do so?

Mr. Commissioner *EXHAM*.—I think you may ask the question.

Witness (to Mr. McLaughlin).—I see now what you mean.

Sergeant *Armstrong*.—Very well. It is not a jury that is to decide it.

Mr. *McLaughlin*.—I don't forget that.

Mr. Commissioner *Coffey*.—I see no objection to his answering.

Witness.—I see now what Mr. McLaughlin means; I understand it. There has not been the same feeling, I may say, of cordiality between us individually that there was before.

263. Mr. Commissioner *EXHAM*.—Since the month of June—since this controversy arose?—Yes.

Sergeant *Armstrong*.—Since he gave his evidence before the police inquiry. It is the most natural thing in the world.

264. Mr. *McLaughlin*.—Since the police inquiry there has not been the same cordiality as before?

Witness.—Yes, since the constabulary inquiry.

Mr. *McLaughlin*.—I don't intend to go into the police inquiry. I intend to avoid it.

Mr. Commissioner *Coffey*.—What he says is, that since the controversy arose between him and the magistrates there has not been the same cordiality or friendship existing between them, which is a very natural thing.

Sergeant *Armstrong*.—A very natural thing—until the explanation this morning.

Mr. Commissioner *EXHAM*.—I would be sorry to suppose it would not exist again.

Mr. Commissioner *Coffey*.—I hope and trust it will exist again.

Sergeant *Armstrong*.—I see no reason why it should not be. The matter has been the subject of explanation.

265. Mr. *McLaughlin*.—Do you believe, on your oath, Captain Ball, it will be again as before—do you believe that—yes or no.

Witness.—That what will be?

266. Mr. *McLaughlin*.—That the previously existing relations of harmony and cordial co-operation will re-exist directly this inquiry is over?—That I cannot at all foretell or answer; I cannot say in the least. I do not know whether it will or not.

267. Now do you know whether any of the magistrates, and confine your answer—for it is only fair so to confine it, to information derived from what you heard these gentlemen say in examination or otherwise—do you know whether any of these gentlemen belong to the Orange society?—I don't know; not of my own knowledge.

Mr. *McLaughlin*.—I don't think it would be fair to ask this gentleman his belief.

Mr. Commissioner *Coffey*.—You know you are not entitled to do it.

Mr. *McLaughlin*.—By the strict rules of evidence I know I am not; but in all the authorities I have consulted I find that the strict rules of evidence don't apply to such a proceeding as this commission. However, upon a law stronger than that, the law of fair play, I don't think it fair to put the question.

Mr. Commissioner *Coffey*.—I don't think it would be legal or proper. It would be condemning parties on belief.

Mr. *McLaughlin*.—Scarcely so, with great respect. Condemning parties on belief—parties who the next moment could be put into the box to contradict the belief.

268. (To witness).—You don't of your own knowledge know anything of the sort?—No, I do not.

269. Were you a member of the bench on the occasion when the breaking of the chapel windows was inquired into?—No, I was not. It was before I came here.

270. Now have you any doubt, Captain Ball, that with the proper force for executive purposes, you here, as a magistrate, believing it to be your duty to put down these drumming parties, could in fact put them down, supposing you were untrammelled by any influence?—Well, I don't know. I am not prepared to say I could.

271. Why?—Well, I don't know at the present moment, I would hardly know how to act with respect to these drumming parties. I know cases, one or two instances, in which those parties have been brought before the bench and informations returned—or at least the cases sent up for the opinion of the law adviser, and these cases were returned with his opinion that no case had been substantiated sufficient to send the party forward for trial.

272. I apprehend that the opinion of the law officer would in a great measure depend on the evidence contained in the depositions?—Oh, I should think entirely.

273. You have had something to do with the law, most honourably?—No.

274. Did you ever hear that the opinion given on a case was not worth the paper it was written on unless you saw the case too?—I never heard that, but I quite understand that that is the case without ever having heard it.

275. If the depositions that went up to the law adviser did not contain the necessary evidence, of course the offence to which the necessary evidence was indispensable was not committed—that is a self-evident proposition?—Well, I should think so.

276. Now do you think in the investigation of cases of the sort you have referred to, it would be your duty

to ascertain whether the display was calculated to create terror and alarm, and lead to a breach of the peace—do you think it would be your magisterial duty so to ascertain?—I should.

Mr. Commissioner COFFEY.—It is perfectly plain if it was not in it no offence was committed, and the converse is equally plain to our judgment.

Mr. M^cLaughlin.—Just so.

277. (*To witness*).—Suppose you were inquiring into a case of that sort would you, as a magistrate, think it your duty to ascertain whether or not such exhibitions were dangerous to the public peace, and calculated to lead to a breach of it?—Yes. I thought that was the last question you asked me.

278. No; I asked that for another purpose. Would you in your own person conceive it to be a proper discharge of magisterial duty to prevent that particular piece of evidence from coming out?—Oh, certainly not.

279. Were you a resident magistrate before you came here?—I was.

280. In what part of the country were you stationed?—In the north of the county of Kerry, at a place called Listowel.

281. I want to ask you whether or not you are aware of the relative proportions of Catholics and Protestants in the town of Dungannon and its neighbourhood—numerically?—I believe they are pretty evenly divided.

282. Are the Catholic inhabitants of the town of Dungannon and neighbourhood accustomed to go about with drumming parties at night?—The Catholics—

283. Yes?—I never heard so—not to my knowledge.

284. I must ask you the question, for nothing is to be taken here unless it is proved?—Well, I never heard of it.

285. Did I understand you to say before the adjournment that it is the rule always when Friday night comes for the other party to go out with drums?—I did not say “always.”

286. But as a rule?—Well, if the weather is very frosty, or say wet, they don't very often turn out—they do sometimes—but I think, as a rule, on most other Fridays of the year that they do.

287. Would you say that the 24th of February was a very hot day?—Oh, no, that was winter.

288. Was it on the 24th of February when you were serenaded by six drums and one fife?—I did not give the number. I don't know what the number was.

289. But I believe the drums predominated?—I think they did.

290. Quite right; the drums don't require much scientific musical skill?—But I think the music is much more unpleasant when they do predominate.

291. Would you say, as a rule, it is very hot about the end of February?—Oh, no, certainly not; at least not in Dungannon—I think it is very cold at that time.

292. In autumn the hot season sets in about July and August?—The months of July and August I think.

293. If you said “a few days” in July and August you would be right, at least this year; that there may be no misunderstanding, I refer to the shooting season, not in a zoological sense, however?—If you mean the grouse season, that I believe begins on the 12th of August.

294. It is to a less favoured class of game I refer to altogether. Have ever you known of a case in which any member of a drumming party has been arrested, brought before the magistrates, and punished?—No; I never knew of a case of anyone being arrested.

295. Were you here at the time of the Killyman funeral?—Yes, I was.

296. I presume that is the case you refer to as having happened fifteen months ago, the 18th of April, 1870?—Yes.

297. Now, what was that case exactly, if you please—what was it?—Well, it was a party—

298. Sergeant *Armstrong*.—Were you there?—*Witness*.—No, I was not.

Sergeant *Armstrong*.—I must object to any statement about what he never saw.

299. Mr. M^cLaughlin (to witness).—Do you know of your own knowledge of what it was—

Sergeant *Armstrong* (to witness).—You cannot tell; you can only tell from what you heard.

Witness.—I know it was called the great “Killyman burial.”

300. Mr. M^cLaughlin.—I called it the “funeral,” have it so—were you in town that day?—Yes, I was.

301. Did you hear any music at all—I mean the music of shots firing?—Oh, I think I did.

302. How far is Killyman from this?—I believe it is four miles; three or four, I am not quite certain.

303. Towards the county Armagh?—Yes; rather towards that direction.

304. Perry-street was the place you resided in when the people at that funeral passed your house?—Yes.

305. Perry is an extension of the street which, starting from the Market-square at the lower end, goes past the church, down the road to where it acquires the name of Perry-street, and so on until you come to Northland-row?—Yes; it is a continuation of what is called Church-street.

306. It is admittedly in the town?—Oh, decidedly; no doubt of it.

307. That being so, do you think it is quite a correct representation of the fact to say that these drumming parties seldom entered the town?—Seldom; no, I should not say they seldom entered the town.

308. I suppose you would substitute for “seldom” “often”?—Well, I would; I would be inclined to say often.

309. Are there not towns people that take part in them?—In the drumming parties?

310. Yes?—I believe so.

311. I believe there are two streets running parallel or almost parallel from what I may call the lower side of the Market-square; Scotch-street runs out of Market-square?—It does.

312. And runs down towards this court-house—this court-house is to the right as you go to the bottom of Scotch-street?—It runs down towards the railway.

313. And an extension of the line across the railway would be the road towards the Windmill-hill?—Yes.

314. And Windmill-hill is an eminence that commands Dungannon, and by analogy of prospect Dungannon commands it?—You mean in a military point of view I say that Dungannon commands Windmill-hill.

315. If I was on the hill with an Armstrong gun I could command Dungannon. Now, when you go along opposite the top of Scotch-street, you then pass Macken's large drapery establishment there, and then you turn to the left?—Yes.

316. And when you turn to the left you go into the infamous locality of Irish-street?—I don't say it is infamous.

317. Nor do I, except in fun. But you go into Irish-street in that way?—You do.

318. It has been stated in this magisterial correspondence that a certain district of the town is inhabited by a peculiar people—I say that in parentheses.

Mr. Commissioner COFFEY.—But it is not altogether fair to Captain Ball, for his answer goes into the newspapers as if he adopted your language.

Sergeant *Armstrong*.—The people who don't know Captain Ball will regard him as the most extraordinary partisan in Europe.

Mr. M^cLaughlin (to witness).—Don't you be frightened by that.

Witness.—I don't see the drift of these observations.

Mr. Commissioner COFFEY.—The short-hand writer takes down the question. It will appear as if you adopted Mr. M^cLaughlin's language.

Witness.—I don't mean that.

Mr. Commissioner COFFEY.—Mr. M^cLaughlin was just now saying “infamous locality”——

Witness.—I don't mean to insinuate that at all.

Mr. Commissioner COFFEY.—He was joking, but still ——

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Mr. *McLaughlin* (to witness).—I was assuming you would understand what seems to me to be perfectly intelligible, and that you can give a plain answer to a plain question without being terrified by the Sergeant.

Witness.—I don't know what the Sergeant said.

319. Mr. *McLaughlin*.—Better still, he does not know himself. I did not at all use the word "infamous" as a description of the place. But passing from that. Do you know that Irish-street is a Roman Catholic quarter?—It is principally inhabited, if not altogether exclusively inhabited, by Catholics.

320. Did you hear in the correspondence read by the learned Sergeant a special reference to the quarter not inhabited by the Catholics?—I don't recollect that.

Sergeant *Armstrong*.—And a very proper and reasonable reference.

321. Mr. *McLaughlin* (to witness).—Now Irish-street, I believe, is principally inhabited by the Roman Catholic party?—I believe so—if not exclusively.

322. Do you know the house at the corner of Shamblane as you go down Irish-street, the house inhabited by a man named Hayden?—Yes, I do.

323. John Hayden?—Yes.

324. There he is [pointing to John Hayden]?—Yes.

325. Now is not that almost in the very centre of what for brevity we will call the Catholic quarter?—Yes, about the centre.

326. Passing Mr. Hayden's on your left you go on until you turn to the left and come down to this court-house?—Yes.

327. Now would you conceive practically that an exhibition of the Orange party at Mr. Hayden's door as being an exhibition not in the Catholic quarter?—Not in the Catholic quarter—

328. Yes—that is the word?—Oh, most decidedly it would be in the Catholic quarter.

329. Would it not be as thoroughly an exhibition in the Catholic quarter of the town as the exhibition of that hat is an exhibition of a hat on the counsels' table?—Yes.

330. Is it not in the very centre of it?—About the centre.

331. And I believe he has the misfortune to be a Catholic. (*Witness assented.*)

332. Do you know a place called the "Fowl Market"—fowl, spelled with a "w"?—Yes; I know it.

333. Now, do I rightly describe the Fowl Market as the space of ground intervening between the end of Scotch-street and the end of Irish-street, below this court-house?—Well, no; I don't think that is called Irish-street.

334. Oh, there is William-street, a continuation of the line—it is at the bottom of that, and runs between Scotch-street and William-street. Now drumming parties coming through any portion of Irish-street could hardly be described as drumming parties that did not enter the town?—Oh, certainly not.

335. And I believe I am correct in saying, if I am not you will put me right if you please, that there is no part of the town exclusively inhabited by any particular set?—No, not exclusively—I don't think so—not to my knowledge.

336. There are portions where one party predominates, and another party predominates, but not exclusively?—Yes.

337. Kindly tell us from your experience, having regard to what you said about drumming parties, what is there in them that endangers the peace of Dungannon and its neighbourhood?—What is in them?

338. You remember what you have stated about your own lodgings having been serenaded, and the other matters you mentioned with respect to these drumming parties?—Yes.

339. Now, I ask you, having regard to these drumming parties, is there anything so dangerous to the peace of Dungannon as these drumming parties?—Well I really don't think there is.

340. Can you mention anything so dangerous as these drumming parties?—No, I am not aware of anything.

341. I believe I am correct in saying that a more kindly and better disposed people do not exist on the face of the world, regardless of mere peculiar religious distinctions than the Dungannon people?—Yes, I think so.

342. Your experience of them has proved that to be their character?—Yes.

343. Of all ranks, and sects, and social grades?—Yes.

344. Do you think that that social good feeling is in any degree endangered or lessened by those drumming parties?—Well, I do think so, decidedly. And if I may explain a little with respect to that answer and question, I may say this, that I have I think I may say four or five times if not oftener been told by some of the Catholic inhabitants—

Sergeant *Armstrong*.—Don't mind what you were told.

Mr. *McLaughlin*.—Very well. They will be here themselves, the most respectable men in Dungannon. Don't be frightened about that.

Mr. Commissioner *COFFEY*.—We don't prevent you asking the question if you consider it right to do so.

Mr. *McLaughlin*.—Thank you.

Mr. Commissioner *COFFEY*.—Any communication made to him as one of the magistrates may be given in evidence. He is one of the magistrates.

Sergeant *Armstrong*.—Having regard to Mr. *McLaughlin*'s statement that he intends to produce eye-witnesses to the matter of which he complains, I don't think it worth while arguing.

Mr. *McLaughlin*.—I did not say a word about eye-witnesses.

Mr. Commissioner *EXHAM*.—It is I take it a communication made to Captain Ball himself as a magistrate.

Sergeant *Armstrong*.—It may turn out that they were communications made by people who had not the least foundation for them.

Witness.—It was nothing connected with the case of eye-witnesses. It was different—nothing connected with the cases of eye-witnesses—

Sergeant *Armstrong*.—You see there is the danger

Mr. Commissioner *COFFEY*.—The line of examination is this—a communication made to this gentleman in his magisterial capacity from a part of the inhabitants touching a matter going on in that way and giving annoyance.

345. Mr. *McLaughlin*.—Just so (to witness). Touching this matter, going on and giving annoyance, what was it you were going to state?—

Witness.—I was simply going to state this, that on four or five occasions, if not more frequently, I was told by some of the respectable Catholic inhabitants here that they had a very strong intention or idea of getting opposition drumming parties, if I can so express it, to the others. I discountenanced that to the best of my power.

346. I need hardly ask you, that in the discharge of your duty you know no party?—Well, I endeavour not to do so.

347. Do you happen to know whether the intention to get up opposition drumming parties arose from the hope thereby of creating a collision that would lead the authorities to interfere?—That was the opinion that I formed in my mind.

348. Did it occur to you that that was the result of their inability to obtain a remedy in any other way—the formation of that incipient determination to obtain a remedy which would prevent these drumming parties?—I don't exactly see the meaning of that.

349. Did the suggestion to get up opposition drumming parties arise from the inability of those who made the suggestion to put down drumming parties otherwise?—That was the impression made on my mind by that suggestion or statement.

350. And you having stated that you would suppress these drumming parties no matter from what side

coming (the Catholic party have not begun anything of that sort yet) it arose, I take it, from a general desire on your part to preserve the peace from dangerous exhibitions?—Yes.

351. Solely that?—Yes.

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352. While the matter is fresh in your mind, could you tell me who were the people that suggested to you that they themselves would get up drumming parties on the other side?—Excuse me; I did not intend to convey that. Not that they themselves intended to get them up, but that it was talked of.

353. Sergeant *Armstrong*.—Let us understand this—

Mr. *McLaughlin*.—I would remind the Sergeant that any official communication made to this gentleman to enable him the better to discharge his duty, whether in writing or verbally, need not be disclosed.

Mr. Commissioner *COFFEY*.—It is not of that character at all. You having asked the question, the Sergeant is entitled to go into it in the fullest way on cross-examination.

Mr. Commissioner *EXHAM* (to Mr. *McLaughlin*).—We ruled you had the right to put the question, and you availed yourself of it.

Mr. *McLaughlin*.—With great respect, I don't quarrel with the ruling of the bench, but it was not I who put the question. It was suggested by the learned gentleman (the witness) himself.

Witness.—I did not mean to convey that those who spoke to me intended to get them up themselves.

354. Sergeant *Armstrong*.—What you intended to convey was this—that they intimated such an idea was on foot in some quarters?—Yes.

355. Who were those gentlemen that so intimated to you?—Do you want to know names?

356. Yes?—Well, one was Mr. Montague, I think another Mr. Hayden.

357. Is that the Mr. Hayden who lives in Irish-street?—Yes.

358. Any other that you recollect?—I don't at the present moment recollect anyone else.

359. And you very properly discountenanced such an idea at all?—I did, decidedly.

360. In your opinion, which is one, I venture to think, in which you have all the magistrates entirely in accord with you; these drumming parties ought to be entirely put an end to?—Well, I really do think so.

361. You said that Mr. Newton has considerable influence in his position?—I believe he has.

362. And that Colonel Stuart Knox is naturally an influential gentleman here?—Yes.

363. And it is your impression that they could put an end to these drumming parties; do you mean by the exercise of their magisterial influence, or by the exertion of their private and personal influence?—Well, I declare I don't know how to reply to that exactly.

364. I think it is a very obvious distinction, I would say quite obvious. You might have a private and personal power over a man which you would have no sort of right to exercise magisterially—to which do you point the answer you gave me—"It is my impression that Mr. Newton and Colonel Knox could put an end to these drumming parties"—do you mean by their private position or by the exercise of magisterial authority?—Oh, I think it would be rather more in their private capacity.

365. You said also in general terms, "I believe that the magistrates, if so minded, could put an end to these drumming parties?"—Yes, I did.

366. Would you be kind enough to tell me, or give me your programme for putting down these drumming parties in the present state of the law? The magistrates would be all delighted to know it. I give you full time to reflect, and tell me now, in fact direct the proofs for putting down drumming parties?—Well, I am not competent sufficiently to do that now.

367. Just tell me the mode as it occurs to your own mind, as an intelligent man?—Well, I think most of the gentry of this neighbourhood—magistrates I should say rather, would have sufficient local and private influence to be able to put a stop to it.

368. Then your answer is this: that they might by the exercise of private and personal power; the gentlemen who take an interest in these localities could put an end to them?—Yes.

369. But can you suggest any means by which, through the exercise of their magisterial authority, they could put an end to them?—I am not prepared to do so.

370. For instance, I will illustrate the matter for you. Suppose a magistrate heard that a drumming party was coming in from Killyman, and they had neither flags, banners, sashes, nor emblems of an offensive character—no party emblems, and were playing no offensive tunes—no party tunes—do you know any means of stopping them from coming into the town of Dunganon?—No, I do not.

371. Don't you know perfectly well you could not?—No.

Mr. Commissioner *COFFEY*.—Don't take us as concurring in this.

Sergeant *Armstrong*.—Not at all. I am taking the opinion of all the magistrates here, and he is one of them, and I will show you that he has stated quite correctly that—*Witness*.—Unless I—

Mr. Commissioner *COFFEY*.—I want to prevent misapprehension. It is our business to consider this carefully, and we don't concur in this.

Mr. *McLaughlin*.—Neither do I—

Sergeant *Armstrong*.—In the absence of sworn information—

Mr. *McLaughlin*.—Allow the witness to complete his answer.

Witness.—It is just this point the Sergeant referred to—if I thought I had a sufficient force to enable me to put a stop to them.

372. Sergeant *Armstrong*.—A sufficient force?—Yes.

373. Did you ever yourself see a drumming party in the town performing, except on the occasion when they were at your lodgings?—I did not say that I saw them on that occasion, on the contrary I said I did not see them.

374. You were asked whether you heard that party with satisfaction. Could any man, approximating to musical taste, listen to any of these bands with satisfaction?—Well, I should say not.

375. I want to know the constitution of these bands. I believe they consist generally of one big drum, four little drums, and a single fife?—Well, as I said I never saw them, I never counted the small drums, or the big drums. I cannot say.

376. You have substantially, except when you were away on sick leave, resided in Dunganon since your appointment here?—Yes.

377. And never did you happen to see any of the bands?—No, not in the town.

378. That is what I am speaking of. Did you on any occasion that you heard them go out to reconnoitre them?—No, I never did.

379. Did you on any occasion?—Oh, I beg your pardon—no, not to reconnoitre.

380. Well, to look at them?—I recollect I did once. There was an occasion, I went down. It was dusk—I could not see much—

381. It was in the night time they came in?—Yes.

382. In the evening, after the day's work?—It was of a summer's evening.

383. But, as a matter of fact, you never saw any of them?—I never did, that is the fact.

384. The people coming from Killyman, did they pass your residence, or should they?—I think they could come into the town otherwise than by coming up Perry-street; I understand the ordinary way is to go down by Milltown.

385. Did you on any occasion that you heard them

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coming apply to the police to interfere or disperse or stop them?—No, I did not.

386. Did you on any occasion consult with your brother magistrates as to preventing them in future, on any occasion when you heard them?—As to preventing them?

387. Yes, in future. That is what we are talking about here. That is the whole thing about these drumming parties. I want to know what you did yourself?—I think I spoke to Mr. Newton.

388. Where was that? I have read the correspondence between you and Mr. Newton?—Well, I don't think I have spoken to him for the last twelve months.

389. Was it not in writing partly?—Yes.

390. Well, I read the letters already. I will not repeat them. I think you and he conversed together as to the best means?—Yes.

391. And I think you both came to the same conclusion that the best thing to do was to have the opinion of the law officer on the subject?—We got that; that opinion was referred to already to-day—but that was not on Mr. Newton's advice—it was entirely on my own notion that that was done.

392. Had you not conversation with him on the subject before you got that—some time before that?—Yes; but it was not the result of any conversation with Mr. Newton that I got that opinion produced to-day.

393. Did he as far as his words could indicate always exhibit an anxiety to co-operate with you to put an end to these things as far as he could?—I think he did.

394. Was it reported that your predecessor in office, Mr. Molony, had a case stated or informations sent forward to the law adviser with respect to the drumming parties—was that reported to you?—Oh, I heard he had on one occasion, and the law adviser's opinion was—

395. I beg your pardon. I am afraid you are confounding?—No, I am not. I think the drumming party—it was some case that occurred when he came over to take some informations—I am not prepared to say it was a drumming party.

396. At all events, you heard the law adviser in that particular case was of opinion that there was no case to be sent forward by Mr. Molony—whatever it was?—Yes I think so. I think that did occur, but I am not prepared to say whether it was a drumming party or not. It must have occurred before I came here, I only know by what I heard since.

397. To revert to what I said. Tell me what means you propose yourself to prevent drumming parties coming into the town—what do you propose doing to prevent their coming? It is easy to wish and easy to indulge in opinions; but I wish to have set down in black and white what you would suggest?—I think that the better plan would be when they came in to have them recognised—to have some of the Constabulary to recognise them, or at all events some of them, and they should then be summoned by the Constabulary, and when it is perfectly well known that these proceedings are offensive to the Catholic party, I would be inclined to return them for trial for tending to create animosity amongst different classes.

398. How often, in round numbers—I don't expect you to be strictly accurate, or to do more than approximate—how often since you came to the town of Dungannon have you heard drumming parties in the street?—In the street?

399. Well, in the town?—I heard them more frequently just outside the town than immediately in the town.

400. Well, I suspect so, in the town; but distinguishing between the district around and outside the town where the houses are scattered, and the town proper where there are continuous houses, how often have you heard them?—Within the town itself?

401. Yes?—I fancy I may have heard them eighteen or twenty times, but more frequently in the immediate neighbourhood of the town.

402. Just so, in the neighbourhood?—Yes.

403. Do you mean at the distance of a quarter of a mile?—Or even less.

404. Did they appear on these occasions to stay outside—to halt there?—Well, I think they did.

405. Taking all these occasions in the aggregate in the town, and out of the town, did you ever communicate with the sub-inspector, or with any of your brother magistrates in reference to take proceedings to stopping these parties, or have you suggested that they should be watched, and summoned, and informations taken against them?—Well, no, for—

406. First answer, if you please, did you suggest to the sub-inspector or to your brother magistrate, the course you now suggest should be taken, to watch them—summons them if known, take informations, and if possible return them for trial—did you ever suggest that?—I did not, because I considered after that opinion of the law adviser had been promulgated here, that it was sufficient, and the constabulary ought to know their duty and ought to carry it out.

407. Did you ever until the inquiry into Sub-Inspector Smith's conduct, complain to himself that he really was not attending to the suggestions of the law adviser?—No, I did not.

408. Did you ever to the head-constable?—Oh, no.

409. Did you ever take any action in any shape, way, or form yourself personally, so as to give effect to the suggestions of the law adviser?—No, but I think there were two occasions on which some of these parties were brought up—one occasion if not two—but there was no occasion on which they were actually punished.

410. I am asking you about your own personal interference. Did you yourself specially and peculiarly take any particular action or prompt any particular proceeding with the view I have mentioned?—No, I wished to act in conjunction with the other magistrates.

411. And you never suggested to them to do anything more than they have done?—I don't think I ever did.

412. These few men were playing for two or three minutes opposite your lodgings?—Yes.

413. You don't know who they were?—No, I do not.

414. Or whether they were country fellows or town fellows?—Well, I don't know. I did not see them or ask any questions about them.

415. They might have been fellows who came in from the country?—They might have been.

416. Was this in Perry-street?—It was.

417. It appears that it was on a Friday evening?—Yes.

418. And you were here till next Monday morning?—I was.

419. And then you retired for some little time on sick leave?—I went away to Dublin. I was unwell at the time.

420. Did you report this matter to the sub-inspector?—No, I did not.

421. Did you to the head-constable?—No, I have said I was very unwell. I don't think I went out of the house.

422. You see you were well enough to travel to Dublin—surely you were able enough to write a note?—I did not.

423. If you really regarded it as a matter of complaint and really was insulted, why did you not apprise the head-constable or the sub-inspector of it—why did you not inform your brother magistrates of it, because to drum at the magistrate's door is bringing matters to what I would call a focus of impudence?—Well, to tell you the truth I did not know whether any of the constabulary were out.

424. Now is it the fact, Captain Ball, that you were really huffed by that matter?—I was, decidedly.

425. Do you suppose that they knew you lived here at all?—I cannot help being of opinion that these people must have known it, for there is the fact that

they stopped for fully two minutes before my door; they must have done it purposely.

426. To do so would be a piece of impudence unparalleled, but I can well understand that they did not know you lived there at all?—But they stopped for a couple of minutes opposite my house.

427. I suppose it was by some accident. I suppose the fifer wanted to get breath?—I think the inference is very plain.

428. Indeed it looks like it. I am not at all quarrelling with your inference. But were you not able to write a note?—I was.

429. Why did you not write to your brother magistrates about this, and call attention to it?—In the first place I told you I did not know whether the constabulary were out that evening or not, and to the best of my recollection there was playing that afternoon, and I was surprised at the fact that there was not any of them out.

430. Was not that an additional reason for complaint?—Allow me. I was finishing the sentence. I really was not at all well. I did not expect to be kept away such a length of time—two months—and when I came back, I did not think it necessary after the lapse of two months to make any reference to it at all.

431. It passed out of your recollection I suppose?—It did not pass out of my recollection.

432. But you left the peace here to take care of itself for a couple of months?—I could not help that.

Mr. *McLaughlin*.—He had to take care of himself.

433. Sergeant *Armstrong* (to witness).—You said in answer to my learned friend—“I am not prepared to say at present I could put them down. At present I hardly know how to act with them.” Do you remember saying that to Mr. *McLaughlin*?—I believe I did.

434. You hardly know how to act with them?—Yes.

435. You know that informations were taken, and a case sent up to the law adviser, who said there was no case?—Yes.

436. Now, I heard it suggested here (it is better to call a spade a spade) that the magistrates falsified these informations?—Oh, I don't say that. I did not say that.

437. I know you did not. But did you hear Mr. *McLaughlin* say there is no value in a case unless the facts are truly stated.

Mr. *McLaughlin*.—I never used the word “falsified,” but I said the case was valueless by the absence of a question not allowed to be put.

Mr. Commissioner *COFFEY*.—What I understood to be the drift of Mr. *McLaughlin*'s question, and what he conveyed to my mind was, that the statement upon which the magistrates should have acted was not permitted to be given in evidence, namely, that the assembly was calculated to produce alarm and terror, and calculated to endanger the public peace; that is the drift of his statement.

Sergeant *Armstrong*.—That is—in this matter my friend has the benefit of an apparent admission of a thing that may never have occurred. That is the inconvenience of it.

Mr. Commissioner *COFFEY*.—But with us it is of no weight unless it is proved.

Sergeant *Armstrong*.—But we must guard the public against it.

Mr. *McLaughlin*.—Allow me to say this—I take from the very newspaper dealt with as an official record by Sergeant *Armstrong*'s clients—the *Northern Star*—the statement that the question was put to the bench, and they ruled the question was not to be put.

Sergeant *Armstrong*.—I know nothing about the *Northern Star*.

Mr. *McLaughlin*.—I will prove it.

Sergeant *Armstrong*.—Prove it at the proper time.

Mr. Commissioner *EXHAM*.—It won't bear upon the case of Captain Ball, if he was not present when the question was put.

Sergeant *Armstrong*.—I want to put a general question to him.

438. To *Witness*.—Did you ever know, or can you give any instance at which the magistrates refused information to be elicited, and statements taken down which you in your judgment thought ought to have been taken down?—No.

Mr. *McLaughlin*.—That may refer to a time before he came here at all.

Sergeant *Armstrong*.—It is not. Let us not be assuming such a thing; it is very awkward.

Mr. Commissioner *COFFEY*.—Except for the purpose of correcting any misimpression that may be produced on the public mind, or be caused by the appearance of the reports in the newspapers, it is quite unnecessary, for we cannot deal with the statement qua statement; it must be proved in evidence before us.

Sergeant *Armstrong*.—At the same time having regard to the fact that this is cross-examination, I think I am entitled to deal with the matter as it has been mentioned.

Mr. Commissioner *COFFEY*.—What is suggested is a grave error and misconduct, if it be proved, namely, that a witness was not allowed to give the evidence which would have justified the magistrates in acting. But it must be proved.

Mr. *McLaughlin*.—I will take care it will be proved.

439. Sergeant *Armstrong* (to witness).—You cannot give any instance of that having been done by your brother magistrates?—No.

440. And in taking down the informations yourself, did you not in a particular instance take down the informations fully and fairly, and return them for the opinion of the law adviser?—In what instance?

441. In a particular instance that they went on to the Castle, do you recollect it?—No, I did not take the informations. I think Mr. Newton took them.

442. Did you assist him in taking the informations?—My recollection is that Mr. Newton took the informations altogether. I am positive.

443. Were you sitting by when the informations were taken?—I was.

444. And were the informations fully and fairly taken, or can you give any instance in which they were not?—No, I have no recollection of any.

445. No recollection of anything suppressed or anything unfair?—No.

446. And you were sitting on the bench?—I was.

447. Did you dissent from the shape of the informations or anything in them?—I have no recollection of doing so.

Mr. Commissioner *COFFEY*.—You are not referring to the same transaction at all.

Sergeant *Armstrong*.—I know, but then we have *ambiguas voces* going out *inter populos*—a statement being made that the magistrates were in the habit of suppressing important matters, and sending useless cases on to the law adviser; it is quite right to have this avowal before a public not very well able to discriminate and take nice distinctions, and who may think that the fact is so because my friend says it.

448. Sergeant *Armstrong* (to witness).—Have you been pretty much resident in the town except when you were away on sick leave?—Yes, I have.

449. And you have been here nearly two years?—Yes.

450. Three times a week in two years—did you hear these drumming parties playing 300 times?—I don't think I heard them three times a week.

451. That is the statement in the memorial—“three times a week”?—I don't think I ever heard them three times a week.

452.—You heard them eighteen or twenty times altogether in the town?—In the town.

453. So I say. But you did not hear them anything like three times a week on an average every week in the year?—No, not at all.

454. You were in town on the occasion of what is called the Killyman burial?—Yes.

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455. And you heard no shots fired?—I don't recollect hearing them.

456. Do you recollect it was yourself who sent up the informations to the law adviser on the occasion when the answer came that there was no case to send forward for trial?—I sent them up, but I did not take them. I did not read them over.

457. You were present when they were taken?—Certainly, I was present.

458. And there was no suppression—no allegation of anything false in them?—I have no recollection.

459. That you ever heard?—I have no recollection of anything of the kind.

460. Mr. *McLaughlin*.—You have been asked by the Sergeant about Mr. Courtney Newton conferring with you as to the best way of putting down these drumming parties?—Yes.

461. You don't mistake that Mr. Newton for anybody else?—No.

462. Were you present in court when Sergeant Armstrong read from the correspondence in his brief Mr. Newton's ingenious suggestion that the country should be divided into districts, and that these exhibitions should be allowed to go on one side of the line in one district, and not on the other, and all that? Did you hear that suggestion?—I don't think I did.

463. That the Lord Lieutenant should have power to say, "in district A you may go on as you like, in district B you shall not." Would you think that the effect of apportioning the country into districts would allay the excitement attending on these drumming parties?—Well, I will tell you what I think regarding that. I would think that they would be less likely to be obnoxious and objectionable if they could be confined wholly within a particular district where only one party resided, and nobody of that party could take offence.

464. Kindly mention any square mile in the north of Ireland to which that description applies, where only one party resides?—I cannot say—

465. I mean human beings, not grass. The Sergeant has asked you—he never asks a question without an object—he has skilfully asked you whether or not these people don't generally remain just a little outside the town?—I think they very often played, as I said, close to the town, outside of it.

466. Dungannon is not as big as London?—It is not as big as London.

467. Dungannon is a small place?—It is.

468. If parties came marching within a quarter of a mile of Dungannon playing music in this extraordinary manner, with five or six drums to one fife, would not anybody residing in the Catholic district of Dungannon, and anybody residing in the Protestant district for that, hear them just as well as if they were in town?—I should think so; certainly.

469. You have been asked by the Sergeant whether you saw any of these assemblies, and you have said you did not?—No, I did not see them in town.

470. Could you tell whether or not any one connected with the town took any part in them?—I have not an idea.

471. I won't ask you a question about that. You were asked by the Sergeant as to the period when Mr. Malony presided on the bench here; were you here at that time?—No, I was not.

472. Was it not then, as already pointed out by Mr. Commissioner Coffey, that the matter occurred in relation to which we have given the particulars—of the 23rd April, 1869?—I could not tell you when it was. I heard there had been such a case.

473. That is the transaction with respect to which we say the question was not allowed to be put. Now, assuming I am right in saying that the question—the most vital question in the entire information—was not allowed to be put, do you think that any opinion of the law adviser upon an information so sent up would be worth anything?

Mr. Commissioner COFFEY.—We may assume that.

474. Mr. *McLaughlin* (to witness).—The Sergeant

also asked you on cross-examination; I only apply to the cross-examination—whether you really were annoyed by that drumming party. Do you think they meant it as a compliment to you?—I cannot say I did.

475. With respect to drumming parties coming into the town as contradistinguished from being in the neighbourhood of the town I want to ask you a question. Going down Perry-street, and turning to the left, as I understand, you came to Northland-row, and proceeding up that, you came to a place where there are no houses—at the end of the row?—Yes, you come to the end of Northland-row.

476. And then you come to the Catholic chapel?—You do.

477. Now, strictly speaking, the Catholic chapel is out of the town—that is, the houses don't go up to the very edge of it?—The houses don't go up to the edge of it.

478. But practically is it not in the town?—Excuse me, I think there is a little mistake. I think it is within the municipal boundary.

479. That is *fortiori*—? But a portion of the houses above the chapel are called Ranfurly-terrace, they are, one would almost say, out of the town, but in point of fact they are in the town.

480. Now, is not the first house, when you pass the chapel, of Ranfurly-terrace, the house of Dean Slane, the parish priest?—Yes.

481. Now is not that the principal road by which the drumming parties generally come in?—Well, they do come in that way often enough, but I do not know that it is the principal way.

482. Now you would not say that drumming parties passing Dean Slane's door were not in the town?—No, I would not.

483. Mr. Commissioner EXHAM.—Since you came here how many policemen have been in the town?—Do you mean at any particular time, or generally?

484. I mean as a general rule, what is the local force here?—Twelve men in the town.

485. How long is it since Mr. Hayden and other parties spoke to you first about the getting up of counter-demonstrations being talked of?—I think it is more than a year and a half.

486. Did you ever communicate that fact to the sub-inspector, Mr. Smith?—No, I did not.

487. Did you communicate the fact to your brother magistrates that you had received that intimation; did you call a meeting of the magistrates to apprise them that that had been stated to you as a magistrate and ask their counsel and advice about it?—Well, I don't think it was conveyed to me as a fact that it would be done.

488. But the fact that it was talked of. You understood that that communication was made to you probably as a resident magistrate?—Yes.

489. And made to you because the parties had more confidence in you, on account of your being their co-religionist, a Catholic—you understood that?—I did.

490. Then I want to know did you thereupon, at the next meeting of your brother magistrates, communicate the fact to them, or did you request them by letter to meet you in order to talk over that matter and consider it?—No, I did not; because I thought my representation to these people who spoke to me was enough. I thought that my representing to them that it would be a very grave, a very serious matter for them to attempt to do anything of the kind was quite sufficient warning, if I may so call it, not to think of it, and that they should discontinue it in every way they could among their friends.

491. Of course. But suppose their friends did not chose to act on the opinion or advice that they gave, I ask you would it not be prudent to have communicated the fact to the other magistrates?—I did not communicate it to the other magistrates.

492. You did not; that is enough. Have you any idea where these drums are kept; are any of them kept in the town of Dungannon, as far as you know?—They are kept, as far as I know, in what is called Milltown.

493. How far is that from Dungannon?—I believe it is within the municipal boundary. You may say it is a little village outside of the town, but inside, I believe, the municipal boundary.

494. Do drumming parties come from different directions? Is not Killyman in the direction of the line of railway between this and Portadown?—It is a little away from the railway.

495. But it is in that direction?—It is in that direction.

496. Drumming parties come from that district?—Sometimes they do.

497. And from the other side too?—Sometimes. And they come, at least I believe so and have heard, from the Castlecaulfield direction—that is the Donoughmore direction.

498. Yes; that is more due west. Do they come from the northern district besides?—I am not aware that they do.

499. Do they come up the road where the new chapel is being built?—I don't know if any of them come in there. I am told they usually come in by Milltown. I believe Milltown is nearly due north of the town, and I think they come from that direction also.

500. That is what I want to know. In fact these drumming parties come in from districts all round Dungannon?—They do.

501. They collect at the roads, and either enter the town or play just on the outskirts of it?—Yes.

502. And then they go home?—Well, I presume so. They may come into the town without playing.

503. You know with regard to people coming from a distance the local police might not so easily recognise them?—Undoubtedly.

504. Are you aware, of your own knowledge, that there are drumming parties who go out of the town, who meet in town, and either play there publicly, taking their drums and fifes about the town playing, or go outside and play them —?

Sergeant *Armstrong*.—He never saw any of them.

Mr. *McLaughlin*.—I am asking him.

Witness.—I never saw any of them; but from what I have heard I believe there are drumming parties located in town—in Milltown.

505. Mr. Commissioner EXHAM.—You have said that on one or two occasions the police did bring forward persons who formed a portion of the drumming party?—Yes.

506. They summoned them?—Yes—no, it was not by summons.

507. Do you recollect, for I wish to know who brought them forward and how?—The names of some of the parties were taken down, and the magistrates consulted as to what should be done with them.

508. And you were present?—I am talking of two occasions on which I was present.

509. And what did the magistrates do on these occasions, you being amongst the number?—Well, the last occasion that occurred was the 16th of June, when informations were taken and returned to the Castle for the opinion of the law adviser, and the opinion was that the magistrates were perfectly right in not sending forward the case for trial.

510. Mr. Commissioner COFFEY.—That is, that the informations you sent up disclosed no indictable offence?

Witness.—Exactly.

511. Mr. Commissioner EXHAM.—But the informations were taken in your presence as one of the magistrates?—Oh yes; the informations were taken and completed, and sent forward.

512. And all the evidence given before the magistrates was truly set forth in the informations?—I believe it was. On that occasion I believe it was.

Sergeant *Armstrong*.—So he stated to me.

513. Mr. Commissioner EXHAM (*to witness*).—Is it not generally considered that the resident magistrate, he being on the spot, located in town, has more peculiarly the charge of the peace of the town in which he

is resident as contra-distinguished from gentlemen living at a certain distance?—But then we are always disposed to act in union with the local magistrates.

514. No doubt of that?—And if a majority of the local magistrates are of opinion that a certain thing should not be done, I think it is generally understood that the resident magistrate should not act in violation of their opinion.

515. I want to know, since you came here, did you ever take counsel with your brother magistrates as to whether steps should be taken, and if so what to prevent these drumming parties going on?—Not beyond what I have already mentioned with respect to that opinion of the law adviser.

516. But nothing further than that, and one or two conversations as you mentioned with Mr. Newton?—I think there was nothing further than that.

517. Mr. Commissioner COFFEY.—I want to ask you a question that occurs to me to be of some importance. You said that some persons communicated to you that it was in contemplation to get up counter demonstrations in the shape of drumming parties?—Yes.

518. Did it occur to you that that was almost to a certainty calculated to produce not only breaches of the peace, but effusion of blood?—Well, I thought it would create breaches of the peace, undoubtedly; and considering it a direct violation of the law, I strongly advised them on no account to do anything of the kind, and I told them also to discountenance it amongst their friends by every means in their power.

519. You have already said in answer to my brother Commissioner that you did not communicate that information either to the Sub-Inspector Mr. Smith, or to your brother magistrates?—Yes.

520. Did you ascertain from these parties that the idea had been abandoned altogether?—Well, I did, after that.

521. There is one matter now I want to understand. It appears to me that this was an exceedingly serious matter, the idea of getting up these counter parties, and by counter demonstrations—this challenge by going about with drums would be accepted by a large portion of the population here with the inevitable consequences not only of breaches of the peace, but of very serious collisions indeed. You have already said you thought that a very serious matter?—Yes.

522. And then as I understand you—you will correct me if I am wrong—you communicated to these parties that that would be a very grave and serious matter?—Yes.

523. And you advised them strongly to use their influence to prevent the idea being carried out?—Yes.

524. What I want to have distinctly on the notes “yes” or “no” to, is this—was it in consequence of having ascertained that that idea was abandoned that you did not communicate with your brother magistrates on the subject?—Distinctly. May I make an observation with respect to that?

525. Certainly.

Witness.—I did not communicate with my brother magistrates, but I made it the subject of personal intimation to the Government.

526. Of course I take it for granted you acting as a magistrate, if the idea has not been abandoned you would have communicated the matter to your brother magistrate?—I would.

527. And am I right in thinking you would consider it a violation of your duty as a public officer, a resident magistrate, if that idea was still in contemplation, if you did not communicate to your brother magistrates a matter so serious?—Well, I think in the first instance before I would communicate with anybody else it would be to the Government, and they were in full possession of what had occurred on the subject.

528. But you would have taken counsel with your brother magistrates?—I should have done so if I considered it was necessary.

Mr. *McLaughlin*.—Allow me through you to put a question which I should have put before you began

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your examination. Kindly ask him whether the two persons came and apprized him of the fact that they themselves would discourage these counter parties and prevent them.

Mr. Commissioner COFFEY.—He said already they had.

Witness.—I intended to convey that. If I did not it was an omission on my part.

Mr. *McLaughlin*.—And this idea was in contemplation before they came to him at all.

529. Sergeant *Armstrong* (to witness).—Let us be under no misapprehension. I asked you at an early period to-day whether or not you had any communication with the members of the Government with regard to drumming parties, and you stated you had not.

Witness.—That is a different thing. I understood you to allude to ordinary drumming parties.

530. Sergeant *Armstrong*.—In justice to yourself, and to prevent misapprehension, you say that in giving that answer, you did not include what you have now

stated—what you heard from these people as to the possibility of their getting up drumming parties on their side. You said this morning in general terms that you had no communication with the members of the Government with respect to drumming parties?

Witness.—There were not existing drumming parties, but drumming parties in contemplation.

Mr. Commissioner COFFEY.—His answer stands for this and nothing more. He made no communication to the Government with respect to drumming parties, except this particular transaction that included prospective drumming parties.

Sergeant *Armstrong*.—Quite right; that is so.

531. Mr. Commissioner EXHAM (to witness).—On the occasions that you heard them playing—eighteen or twenty times you say—were they playing party tunes?—I am sorry to say, or rather I am glad to say, I am not in the least acquainted with those tunes that are called party tunes here, and I could not really say whether they did or not. I am not *au fait* at that.

The witness then retired.

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Quinn.

The Rev. *Patrick Quinn* sworn; examined by Mr. *McLaughlin*.

532. I believe, Father Quinn, you have been for the last twenty years a priest of the Catholic church?—Not twenty—eighteen or nineteen.

533. You were ordained, I think, in 1853?—I was.

534. And thereupon I believe you were stationed in the town of Dungannon where we now are?—Yes.

535. I believe you remained stationed in the town of Dungannon for some fifteen or sixteen years?—About fifteen years and a half.

536. Then I believe you had promotion to the parish of Beara, in this neighbourhood?—Yes. I was sent to have charge of the parish of Beara.

537. I need hardly ask you whether during the period of your sojourn here as a Catholic curate, you had frequent and extensive opportunities of knowing all about Dungannon and the people, especially your own people?—Well, I had the opportunity of knowing a great deal about Dungannon and its neighbourhood.

538. I believe, I don't know how the fact is myself, I did not look into it. I am about correct in saying that the population are about half and half—those that are of your belief, and those that are not?—Well, I think it is pretty accurate.

539. In passing, I may ask you is it not the fact that the majority slightly inclines to the Catholics?—The Catholics are the majority I should think.

540. Well, I believe as generally happens in the north of Ireland, in point of social eminence and all that, and in the professional classes, those from whom magistrates would *prima facie* be selected, are generally not Catholics as a rule?—That appears to be the rule.

541. And the town of Dungannon is no exception to it?—No.

542. Can you say whether you ever heard these drumming parties, or do you know anything about them?—Yes; I heard them frequently.

543. Do you know the number of times you heard them, or could you approximate it?—Well, it extends to such a lengthened period that I could not exactly mention the number of times. At some seasons of the year the drumming was more frequent than at others. Some parts of the year they might be drumming every evening.

544. Every evening?—Every evening, at some parts of the year; at other times there would not be drumming for a month.

545. Would you consider a month, from your experience of Dungannon and its neighbourhood, and their musical tendencies, a long period of quietude?—Well, yes I would.

546. From the drumming?—I would.

547. Now, do you know whether or not these

drumming parties were taken part in by more than one side?—Well, I suppose it is pretty clear they were all on the one side.

548. I believe, by what is commonly called—I mean no offence by it—the Orange party?—Yes; they call themselves by that name.

549. Can you say, from your knowledge of the people of Dungannon—by people, of course I mean those of your own communion—can you say with what feelings they regard those drumming parties with respect to exciting in their minds alarm, or tending to breaches of the peace?—I believe they always considered them a very great grievance.

550. In what way?—They look upon them as an insult to their feelings; they look upon them as injurious to property, and sometimes leading to bloodshed and loss of life.

551. Have these grave results you have mentioned ever taken place in consequence of drumming, within your knowledge?—Well, there have been riots and bloodshed. I have no distinct case—

552. I will come to distinct cases in a moment. Now, sir, is that feeling universally prevalent amongst the Catholics, or is it only prevalent to a limited extent?—Oh, I think it is general.

553. You think it is general? Is that your way of saying it is universal?—I adopt universal, if you say universal is general.

554. I won't say that. Would it be true if anyone, a magistrate or otherwise, said that this feeling was confined only to the lower class of fighting Roman Catholics—would that be true?—

Mr. Commissioner COFFEY.—Low class of what?

555. Mr. *McLaughlin*.—Low class of fighting Roman Catholics. (To witness).—Would it be true if any magistrate said—and I am advised a magistrate said and swore it—that the feeling was confined to the low class of fighting Roman Catholics?—I don't consider it true. Of course that might be the gentleman's opinion.

556. But you don't believe it to be true?—I don't consider it true.

557. Is it true? Would you, as a Catholic of education, say that that feeling is confined to the humble members of your communion?—Oh, I should say it was general, and I believe it to be so.

558. Did ever you know a Catholic of any independent spirit that did not have that feeling on the subject—amongst your community?—I am not aware of any.

559. Is it your feeling?—It is—strongly.

560. I need hardly say you are not a low fighting Catholic.

Sergeant *Armstrong*.—I don't think it is a fair, I will even say, a proper thing, to assume, for the purpose of having this reported in the newspapers, that such a thing was ever said by anybody.

Mr. *M'Laughlin*.—I utterly disclaim any such intention. I have put the question advisedly—"Would it be true if stated by a magistrate or anybody?"

Sergeant *Armstrong*.—I know; but is it to be proved?

Mr. *M'Laughlin*.—It will be sworn to and proved at the proper time.

Mr. Commissioner *COFFEY*.—The way the matter stands is this. The phrase was new to me; it don't occur in the correspondence, and I understand Mr. *M'Laughlin* to have asked the question to show that if such a thing was said it was erroneous; and now he states in reply to you that it was said by a magistrate, and he intends to prove it.

Sergeant *Armstrong*.—I know, but I consider there was a legal offence committed by my friend before I intervened in assuming such a thing was said.

Mr. Commissioner *COFFEY*.—It is of no weight, but simply an assertion and allegation of no value without proof. But it is a matter which he states on his own responsibility, and we cannot limit it. I take it for granted Mr. *M'Laughlin* has been instructed to state it, and prove it.

Mr. *M'Laughlin*.—Does any man in court think I invented it?

Sergeant *Armstrong*.—Not at all. You did not invent it, but, at the same time, it seems to be a fire-brand expression.

Mr. *M'Laughlin*.—I don't mind that.

Mr. Commissioner *COFFEY*.—I hope and trust the inquiry will be conducted with calmness on both sides.

Sergeant *Armstrong*.—Certainly; but I always will object when I hear such a thing said without anticipation—without any statement from my friend who did not chose to avail himself of any statement—a whole week, perhaps, having to elapse before a single magistrate will have the opportunity of being heard.

Mr. *M'Laughlin*.—Can I help that?

Sergeant *Armstrong*.—You cannot; but the public mind should not be influenced in this way.

Mr. Commissioner *COFFEY*.—If it is part of his case that that observation had been made, then it is pertinent to the inquiry we have before us, and we cannot limit his discretion by supposing he is not going to do what every professional man is bound to do, using that language, and assuming it to be stated without being fully instructed to prove it.

Sergeant *Armstrong*.—It is quite apparent that the only objection to it is in point of time—this forcing in of evidence as it were *de bene esse*, to supply a want. If my friend had proved the statement first it would be quite legitimate to ask this gentleman—from your experience, from your knowledge, is so and so the fact; but this thrusting it in, as I say *de bene esse*, is not fair, as what the witness says may be forgotten before the time comes.

Mr. Commissioner *COFFEY*.—Such a thing cannot be forgotten. I will take care of that.

Mr. *M'Laughlin*.—I don't think I have done anything to warrant this vigorous language from one of Her Majesty's Sergeants. I object to any counsel, however eminent—however overwhelmingly eminent—using "firebrand" language to me in the ordinary discharge of my duty.

Sergeant *Armstrong*.—I think it has just that tendency—to make the common people of Dungannon rest under the impression that some magistrate said what my friend assumes for the time he did say. I think it is but common fair play and justice that he should have anticipated this line of examination by proving the fact, if it is a fact. I submit that confidently to the bench as a matter of law.

Mr. *M'Laughlin*.—We will prove it never fear.

Sergeant *Armstrong*.—I don't object to you endeavouring to prove it.

Mr. *M'Laughlin*.—But I do assume it, and will prove it.

Mr. Commissioner *COFFEY*.—If the question is to be put to us as a matter of discretion, unquestionably it seems to me, subject to what view Mr. Exham may take of it, that it would be better to point the question directly to the individual intended to be indicated as the person who used the language, because, as it at present stands, it seems to be an imputation on all the Dungannon magistrates.

Sergeant *Armstrong*.—We don't know who the cap fits, or who is the guilty party.

Mr. Commissioner *COFFEY*.—And you shall have full opportunity of contradicting or explaining the observation.

Sergeant *Armstrong*.—But not until the proper time.

Mr. *M'Laughlin*.—You can have it now.

Sergeant *Armstrong*.—I object to examining two witnesses at a time.

Mr. *M'Laughlin*.—I don't want to examine two witnesses at a time, but I am perfectly ready now to tell you the person who used the observation—Mr. Courtney Newton is the magistrate to whom I refer. Before I examined about this matter, I took the precaution of communicating with the person who heard him say it.

Sergeant *Armstrong*.—Very well. We will see about that.

561. Mr. *M'Laughlin* (to witness).—At all events it is your opinion that these drumming parties are offensive?—It is.

562. Is it your opinion that they are calculated to endanger the peace?—It is.

563. By exciting those who differ from the drumming parties in religion?—Certainly.

564. I was about to ask you were you the curate who officiated at the old chapel near to where the new church is now being built—that is, the chapel referred to in the examination of Captain Ball—Dean Slane's house being close at hand?—Yes.

565. Dean Slane is a very old man?—He is.

566. In discharging your duty as a clergyman, I suppose you were obliged to go out at night?—Very often.

567. That is always the case I believe with the priest?—It is always the case with the missionary priest.

568. Can you tell me whether these drumming parties excited in your mind any apprehension at the time when you had to go out at night in the discharge of your duties?—Well, I would rather not meet them.

569. Perhaps the feeling was mutual. You don't seem to be a man of great timidity?—Not very.

570. Do you remember in July, 1864, anything arising out of these drumming parties taking place opposite the house of Dean Slane, the parish priest, near Dungannon or in Dungannon, rather?—I am not quite distinct as to the date.

Mr. Commissioner *EXHAM*.—1864.

571. Mr. *M'Laughlin*.—July, 1864, the first item in our bill of particulars?

Witness.—I am not quite distinct as to the date, but the fact I distinctly remember. I think it was in December, 1864. There was a devotion going on in our little church, called the Novena, before one of the principal festivals, and after the people had left the church, going to their respective homes from the devotion, a considerable number returned to the clergy from the Killyman-road, telling them they were afraid to go home to their respective places. We inquired what was the reason, and they told us that a drumming party was at the Lime-kilns, and they had run back to us.

572. Were these drumming parties in those days as common as they have been latterly, when I say latterly, I mean the period before you were transferred to Beara?—Well, I believe, from what I have heard, that they have become more frequent latterly.

573. Do you remember the celebrated case of the

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574. Just tell the Commissioners in your own way what occurred on that occasion.

Sergeant *Armstrong*.—And be kind enough to state matters within your own knowledge only.

Witness.—I remember the 12th of July, 1865. I was taking a walk in the direction of Castlecaulfield, at about twelve o'clock, I should think.

575. Mr. *McLaughlin*.—Noon?

Witness.—Yes. I heard an extraordinary noise of drumming. At first I did not make out the drumming party; an angle in the road prevented me seeing them. However, as the party approached the sound of course increased, and the party soon established their presence. I retired immediately into the town, knowing that if the party came into the town there most undoubtedly would be a collision. The party came on beyond this Court-house, round by the hotel, and up Scotch-street. I was in the hotel when the party were passing; I did not wish to mingle with the party, or indeed be in the street when they passed.

576. What hotel do you speak of?—The hotel now occupied by Mr. Moon. I did not wish to be in the street from motives of prudence. Suddenly the drumming ceased, and on hearing that I suspected at once there was a collision, and I almost immediately went up the street to inquire what was the cause. I suspected there must be—

Sergeant *Armstrong*.—Don't tell us what you suspected, if you please; only what you saw.

Mr. *McLaughlin*.—What you saw and heard.

Witness.—Immediately I went up from the hotel, and on going to the place called Shamble-lane, opposite which there is an entry, I found that the drumming party had run into the entry, and that the crowd of people in the street appeared very excited. Mr. Brooks, a magistrate of the town, was in the street. I spoke to Mr. Brooks, and told him that the sooner the drumming was got out of the town the better, "because," said I, "if they remain here crowds will collect, and neither you nor I can keep the parties asunder." Soon afterwards I spoke to the constable. I think Mr. Fitzpatrick was the gentleman in charge at the time. I said that this party from Castlecaulfield had acted very foolishly; that they came into the town and through a street through which drumming parties had not in my memory gone before; that I looked upon it as a serious offence, and calculated to lead to a breach of the peace; and further, that I considered it a great offence to myself and to my co-religionists. I said, too, that it was as little as he could do to go in and take the names of the party. I went on myself for the head-constable, and he proceeded to take the names, and that party insulted me when they got me inside.

577. Inside where?—Inside the entry. I came out into the street again, and met the magistrate; and after conferring with him for some time, I agreed and took upon myself to use my influence with the Catholic party to keep them back to allow time for the drumming party to come out of the entry and go to their respective homes; on this condition, that the fifes and drums should be left in the entry, because if the fifes and drums appeared I would not be able to control the people. On these terms the drumming party were allowed to go quietly from the town.

578. What time of the day might that be?—Well, I suppose what I have described occurred immediately after twelve o'clock—about half-past twelve, or perhaps a quarter after twelve.

579. Now, later on that day did the Orange party return at all into the town?—I am just coming to that.

580. If you please?—My impression was—

No matter about it; you can't state what is passing through your mind.

Mr. Commissioner COFFEY.—Tell us what you saw.

581. Mr. *McLaughlin*.—What time did you see them coming back?—I could not identify the party I had seen in the morning.

582. Mr. Commissioner COFFEY.—You saw a party?—I saw a party.

583. Mr. *McLaughlin*.—Do you know if they were Orangemen or the other people?—Well, I believe it was pretty clear that they were the party called the Orange party.

584. About what number were they—first, what was the number, as nearly as you can approximate, of the first party?—Well, there could not be more than twenty or twenty-four. I am not quite accurate, but I think about twenty or twenty-four.

585. Now at the time that the party of twenty or twenty-four were there opposite Hayden's corner—when you say Shamble-lane, is that where Mr. Hayden lives?—The opposite side of the lane; I mean it is not farther than from one side of the Court-house to the other.

Mr. Commissioner COFFEY.—We know where it is.

586. Mr. *McLaughlin*.—Did you see any police there at all at that time?—At the time of the collision?

587. The time you were coming on at the Court-house?—There were a few, I believe. Yes, I saw there, at the first entrance, I think two or three police.

588. Now we are done with the first party. With regard to the large party coming in again, from what direction did they come as far as you saw?—They came from the direction of Moy.

589. About what number of them were there when they came on as far as you could judge?

590. Mr. Commissioner EXHAM.—Which direction, was it the opposite from Castlecaulfield, or what?

591. Mr. *McLaughlin*.—Would that be up Perry-street?—Yes.

592. Would they pass down Northland-row?—No, they would come on by the Moygashen-road.

593. About what number were they?—Well, I think about, I would say between three and four thousand. Of course I am giving substantially—

594. Mr. Commissioner COFFEY.—There was a large number at all events?—The street was crowded from end to end; I would say three or four thousand.

595. Did you see if they were armed or not?—Oh yes, they were armed with all sorts of weapons.

596. For instance?—Seythes, grapes, pitchforks, bayonets?—Well, I don't know about small arms.

597. You saw the seythes and pitchforks?—I did.

598. And the bayonets?—I did.

599. Do you know whether they had with them any drum at all?—Oh yes.

600. Many?—A great many.

601. Had they any flags with them that you saw?—I did not observe any flags that I remember.

602. Where did you first see them?—I saw them coming up Church-street—that is the continuation of Perry-street.

603. Mr. Commissioner COFFEY.—About what hour of the day was this?—Well I would say this was about half-past two. I think between two and three.

604. Mr. *McLaughlin*.—Now did they come into Market-square by the lower side of it passing the church?—They came into what I would call the foot of Market-square.

605. Is there not a street there called William-street?—No, I think not.

606. Where you pass out of it; do you know where Scotch-street is?—I do very well.

607. Did you see what road they took from Market-square when they came into the lower side of it?—They came down Scotch-street.

608. Did you think that calculated to endanger the peace?—Well I think it is quite clear it was.

609. Do you know whether it created terror—did it create terror in your mind?—Very great.

610. Was that the day that the houses were wrecked?—Yes, houses were wrecked on that day.

611. Did you see any houses that had been wrecked?—I saw them the next day and the evening of that day too.

612. In what quarter of the town did you see those

houses the next day or that evening?—The hotel was wrecked.

613. Which hotel?—The hotel now occupied by Mr. Moon, then by Mr. Hughes.

614. Of the Ranfurly Arms?—Yes.

615. He is a Catholic, I believe?—He is.

616. And he at that time lived at that which is Moon's hotel now—did you see were any houses in Irish-street wrecked at all?—I did; Mr. Hayden's house was wrecked.

617. Was it well wrecked?—Yes.

618. Riddled, I suppose?—The windows were broken—not only the glass but the sashes, and some valuable mirrors, I believe, were broken inside. I don't know whether that was true of other houses, but it certainly was of Mr. Hughes'.

619. Were there other windows broken there too?—Oh yes.

620. Sloane-street—how did it fare as far as you saw?—As to Shannon-lane—

621. Off it?—I believe there were houses wrecked, but I don't remember.

622. There is a place which has been mentioned here by Captain Ball in reply to one of the Commissioners or my learned friend,—do you know a place called Milltown?—I do.

623. Milltown, I believe is within the municipal boundary?—I believe it is.

624. Although a little detached from the town; do you know on that occasion where the Orange party went to?—I believe they went down by the Milltown-road, leaving the town.

625. Do you know of your own knowledge whether anybody was arrested that day for taking part in those proceedings—that day that I was talking of?—Well, I think there were arrests made on that evening. I don't remember any arrests being made in the early part of the day.

626. I believe some were sent forward for trial?—I believe so.

627. Do you remember the 6th or 7th of August following, in the same year?—I do, but I think I was at home on that occasion. I got vacation and was absent from Dungannon on that occasion.

628. Do you remember, in September, 1866, the time that the Orangemen marched to Donaghmore, near this place?—I do.

629. Did you see them at all?—No I did not.

630. Do you know what the feeling was among the people at that time?—I do.

631. Did you of your own knowledge see, or I should rather say hear any firing of shots on that day?—On the 12th August, 1865?

632. In September, 1866?—I was not at home. I was not concerned in that period at all.

633. What time did you hear this?—I left this in December, 1868.

634. During all this period did those periodical drumming parties continue, notwithstanding the discussions you have been narrating?—Oh yes, at short intervals.

635. You say short intervals—a month would be an unusually long interval?—I think so.

636. Did they continue after the wrecking of the houses?—Yes.

637. After those various incidents you have been mentioning?—Oh yes, with certain intervals sometimes.

638. Did you yourself entertain any apprehension that, having regard to what had taken place previously, those drumming displays would endanger the peace, and tend to risk the effusion of blood?—I was certainly very apprehensive on the 12th July, 1865. I was very much afraid all that day myself; deadly weapons were brandished over my head.

639. Was that the time you went into the entry?—No, it was when the large body came into the town that the weapons were brandished over my head.

640. What sort of weapons did they use for that purpose?—I have described them already.

641. I know, but what selection did they make to crown you in that glorious way?—Well, I think there was an old bayonet and, I think, a scythe; and there were some women who presented their fists, I believe.

642. That was the most dangerous weapon of all, except their tongues. Now, this was when you were endeavouring to get them safe out of the town?—Yes.

643. Do you remember July, 1868, the time when the Orangemen had the excursion to Lisburn from Dungannon?—I remember hearing of it, but I don't know anything of it. I was not in this locality in July, 1868.

644. July, 1868?—Oh yes, I was in the neighbourhood at that time.

645. That was the July before you went away?—Yes.

646. Do you remember if there was any wrecking of houses on that occasion?—Well, I have no distinct recollection of it.

647. Very well, I will say nothing about it. Now during all this time, Mr. Quinn, what was your feeling—I ask you first personally—with regard to the conduct of the magistrates, those drumming parties continuing; what did you as a Catholic priest feel with reference to their conduct—had you confidence in them?—Well, as gentlemen I respected them all.

648. As magistrates how did you feel?—Well, I must say I felt that they could remedy the evils to a considerable extent.

649. Is that still your opinion?—I think so.

650. Do you know whether among your communion that opinion prevails?—Generally.

651. Beragh is in this neighbourhood, and you are often in Dungannon?—Not very often.

652. You know the feeling of the locality and all about it?—Oh, very well.

653. Have the people confidence in the local magistracy with reference to those party exhibitions?—Well, I must say that whenever a party case occurs, and goes before the bench of magistrates on any of our local tribunals, the people feel that they are not represented on the bench. That is my own impression, and I believe the impression of the people.

654. Do you know whether or not an opinion is entertained as to the existence of a bent or prejudice in the minds of the magistrates as accounting for that state of feeling on the part of the people?

Sergeant *Armstrong*.—I rather think this feeling, if it exists, ought to be based on something like facts.

Mr. *McLaughlin*.—You can cross-examine him as to that.

Sergeant *Armstrong*.—What the drift of this is I don't see. We know that Roman Catholics are not represented on the bench; but how that can tend to show misconduct one way or the other I am at a loss to understand.

Mr. Commissioner *COFFEY*.—It certainly does not show any misconduct on the part of those gentlemen.

Sergeant *Armstrong*.—I regret for one, that there are not Roman Catholic gentry to supply members of the bench, but we can't make them.

Mr. *McLaughlin*.—Nobody for a moment would contend that the fact of a man being a Roman Catholic would prevent him from being capable of administering justice; but nobody for the north of Ireland, as a rule, would expect Roman Catholic magistrates, for there is not material as a rule to make them out of; but do you believe, Mr. Quinn, that the feeling of want of confidence is well founded? What is your opinion?

Sergeant *Armstrong*.—I object.

Mr. Commissioner *COFFEY*.—The last question, of course, we can't exclude. He asks this gentleman his opinion.

Sergeant *Armstrong*.—Not based on matters of fact.

Mr. Commissioner *COFFEY*.—Surely, Sergeant, you will ask him on cross-examination—"You say you have no confidence in the magistrates. Tell me the grounds of your opinion?"

Sergeant *Armstrong*.—But you see this is an inquiry

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into the acts, affirmatively, and the omissions—the negative acts, so to speak—of an existing class of people. Now, in considering this question to give any operation to this gentleman's personal opinion, save so far as it is based on facts, is calculated to mislead the tribunal, I think. If he has any facts to state, let him state them, and you are competent to draw inferences from them and assign their due weight to them. But if we had the entire Roman Catholic population of Dungannon, whatever thousands they may consist of, to say that they had no confidence in the magistrates, that might be hurtful to the magistrates as a body, yet it would be based on nothing whatever except that they are not Catholics.

Mr. Commissioner COFFEY.—No doubt; but the statement we have to inquire into is, that there is a series of transactions in which no persons having been brought to justice, the allegation is, that no steps were taken to make them amenable; and the memorial goes on to state that “from the foregoing facts, as well as many others that can be adduced, your memorialists believe that both local magistrates and police authorities took no effective means to stop proceedings so offensive to us, and so dangerous to the peace of the locality.”

Sergeant *Armstrong*.—I have already called your attention to the fact that the investigation into the whole of the matters stated in that memorial is not before you, nor within the scope of the inquiry. The question of the administration of the law is, I apprehend, a question of fact; it rests on facts, and not on any unsubstantiated and unsustainable opinion. This gentleman is asked his own personal feeling as to confidence or no confidence in the magistrates. Unless he has some facts to go on—

Mr. Commissioner COFFEY.—He has given four or five transactions that occurred; and in my judgment it is legitimate for him to be asked the question arising out of these circumstances—“what is your opinion?”

Sergeant *Armstrong*.—The only case he referred to of the least moment is the one in which the parties were arrested and sent for trial. He stated that. What more could the magistrates do? and as to the others there is nothing at all against them.

Mr. Commissioner COFFEY.—His opinion may be perfectly valueless or of exceeding great value; but that depends on facts.

Mr. Commissioner EXHAM.—Precisely a similar class of evidence was given at Londonderry. My learned friend, Mr. Murphy, and I, in the report that we gave, pointed out the fact that no doubt the opinion existed, but that there were no facts whatever to warrant it that we could find out.

Mr. *McLaughlin*.—That somewhat equivocal declaration is a little premature on the part of the Sergeant.

Sergeant *Armstrong*.—It strikes me as a little illogical to suppose that by getting the particular opinions of individuals not based on any facts—

Mr. *McLaughlin*.—Sergeant Armstrong himself got the same kind of evidence at Belfast.

Mr. Commissioner EXHAM.—Mr. *McLaughlin* knows perfectly well that at Belfast a mass of evidence was given on both sides. On one side they said that they had no confidence in the magistrates, and on the other side they said they had.

Mr. *McLaughlin*.—If the evidence is as valueless as the Sergeant protests it will of course do him no harm. [To the witness]—I asked you whether you as a Catholic, knowing the locality, and having regard to the facts and circumstances, have confidence in party cases, in the administration of the law by the local magistrates?—Well, I believe there is a great prejudice against them.

655. Mr. Commissioner COFFEY.—You are not asked that. You are asked your own opinion from the facts?—Well, my own opinion, gentlemen, is, that it is almost impossible for a man to abstract from his own feelings, and from the party to which he belongs, when he sits in judgment in a party case; and as such I fear that judgment cannot impartially be pronounced in such a case.

Mr. *McLaughlin*.—No one will laugh at the magistrates when they are cross-examined.

656. (To witness).—Mr. Quinn, do you happen to know whether any of the magistrates are Orangemen?

657. (To witness). Do you know any of the persons who were in the habit of taking part in those demonstrations, and what rank of life they occupied—whether they were farmers, or shopkeepers, or working men, or servants to gentlemen, or magistrates, or anything in that way?—Well, I think almost all states contribute more or less to them—all grades I think.

658. Sergeant *Armstrong*.—You mean coming to those drumming parties on the 12th July?—Yes; I think so.

659. Mr. *McLaughlin*.—I want to know whether or not Catholics have ever gone on with those continuous drummings?—I am quite certain that they do not in this neighbourhood.

660. Do you think they would be let to do so?—If the clergy have any influence over them they would not.

Mr. Commissioner COFFEY.—All I can say is, that the executive don't deserve the name of executive if they allow it.

Mr. *McLaughlin*.—They did it in 1864.

Mr. Commissioner COFFEY.—Mr. *McLaughlin*, we may as well say at once that if such a thing were permitted there would be no knowing what the consequences would be. I am not saying that it is a proper thing to allow the continuance of these drumming parties; but I say that tenfold evils would arise if counter-demonstrations were allowed. The executive would not deserve the name if they permitted them.

Mr. *McLaughlin*.—I want to know if any act of the kind is reported. I would like to see anyone who says there is; and I say deliberately—if it be of any benefit to the public peace for me to make the declaration, that nothing more unwise, nothing more suicidal could be done by the Catholics of this locality than in the slightest degree to imitate those uncontrolled excesses which are a disgrace to the locality, and a disgrace to those interested in the administration of the law.

661. (To witness).—Now, at what time did you leave this?—I left this on December the 16th, 1868.

662. Are you able to say whether you have not on many occasions been obliged to use your own influence as a clergyman to prevent opposing demonstrations in consequence of those drumming parties?—I always used my influence for keeping the peace.

663. Did you think it was necessary with reference to those things?—I believe it was very necessary.

664. Do you think the local peace is endangered by the continued prevalence of those drumming parties?—I have no doubt of it.

665. The present feeling of the people in antagonism to them is as strong as ever it was, so far as you know?—I believe it is.

666. And your own feeling is as strong as ever it was?—It is.

667. Can you, Mr. Quinn, as an experienced and distinguished clergyman tell me anything that so much endangers the public peace in this locality as these drumming parties?—I believe there would not be a more peaceable district in her Majesty's dominions than Dungannon is, but for the drumming parties.

668. Is it not the fact that a more kindly and friendly people to one another, regardless of creed and class distinction don't exist?—I subscribe to all that; and I have received marked kindness from every denomination.

669. And the only thing that tends to keep them asunder and endanger the peace is these drumming parties?—I believe so.

670. You know, although not a peace officer, sufficient, I suppose, to answer this question—do you think the magistrates, with proper executive power, could prevent those drumming parties in the evenings?—Oh, I think they could.

671. A question has been asked by Sergeant Armstrong, tending to create a distinction between the magistrate as a man and the magistrate as a justice; do you believe that the magistrates of this locality are generally gentlemen of deserved influence with the people?—Their social position entitle them to be so.

672. And I suppose the influence they otherwise would have is not lessened by the fact that they are of the same political and religious views as a rule?—Certainly not.

673. And I believe there is only one Catholic magistrate in the whole county who does not belong to the Dungannon bench, and he was appointed the other day for his sins?—That is true.

674. Do you believe that the exercise of their influence by the country gentlemen, magistrates, and resident gentry would put down those exhibitions, if that influence were properly exercised?—Well, I think they could do it.

Cross-examined by Sergeant Armstrong.

675. I understand you, sir, to say that your experience of the locality is, that the people are fond of each other and kindly disposed towards each other except when the drumming goes on?—Well, the drumming leads to disagreement.

676. Is not the drumming always going on?—With some intervals.

677. Very slight intervals, as I understand, and there is a general system of drumming. I want to know where are these loving intervals when they are so fond of each other. If they are always fond of each other except when they are drumming, and if they are always drumming when are they fond of each other?

Mr. *McLaughlin*.—Do you understand that?

Sergeant Armstrong.—Oh, indeed he does, right well. I would like to know what became of those drums of that little party of two dozen that were abandoned in the gateway?—I believe they were returned to them.

678. Returned?—I think so.

679. They beat out of town: what I want to know is did they get them back again?—They did, a few days afterwards, I think.

680. I understand that they left their music behind them, but that they walked out nearly as they were in other respects?—What they did was—they walked out and joined their brethren and brought them in force.

681. I believe the little party who got in at the gateway had no demonstration of scythes and pitchforks?—No.

682. As I understand, it was the bigger body that came that had those?—Yes.

683. Now the little party came from Castlecaulfield?—Yes.

684. And the other party from the Moy direction?—Yes.

685. Arn't those just opposite directions—they don't lie in the same district?—They do not.

686. So that the party that came in the second time was apparently a lot of fellows of their own collection?—The impression was, that the party that left town really went out to bring in the second party.

687. I want to know still what became of the drums that belonged to the two dozen in the morning?—I believe they were returned to the party a few days afterwards.

688. It was not you that gave them back?—I had nothing to do with them.

689. Why didn't you burn them, so that they never would play another tune?—They were not my property.

690. Then there would be an action of trover for the sheepskin. They went away peaceably at all events?—The first party did.

691. And with your assistance very much, I am happy to say that no direct personal offence was offered to you in the evening when you did interfere. Did not the people behave respectfully?

Mr. *McLaughlin*.—Let him answer that, having regard to the scythe. SECOND DAY

692. Sergeant Armstrong.—I want to know did they not treat you with decorum when they gave you advice in the evening?—It was nice decorum to have a scythe over one. August 17.
Rev. Patrick Quinn.

693. Were you in any danger from it at all?—Most undoubtedly.

694. Really?—Yes.

695. And you were frightened at it?—Yes.

696. And you told him to begone and not touch you?—I said nothing to him. It was useless.

697. Eh?—It would be useless to speak to the party then.

698. But none of them touched you, I hope. They did not commit such sacrilege as that. They did not lay a finger on you; their teeth were worse than their bite—they did nothing?—They threatened a great deal.

699. About the "wrecking" of houses—a comprehensive word—you say that Hughes' hotel, where Moon's now is—had the sashes of the window broken as well as the glass?—I did not say that of Hughes's; I said it of Hayden's.

700. And that Hughes's valuable mirrors were broken?—I believe so.

701. Did you see any of them?—I did.

702. That is the best proof in the world. And that Hayden's sashes were broken as well as his glass?—Yes.

703. Was it on that occasion that the arrests took place in the evening?—It was later in the evening.

704. I mean the arrests with reference to those outrages of that day—the arrests of which you spoke?—It grew out of the proceedings of the early part of the day.

705. The arrests with reference to what occurred that day—of some of the people who are concerned in the row of that day—was not that so?—Well yes. It had connexion, because the rowing in the evening never would have existed but for the demonstration in the morning.

706. You stated that arrests were made that evening?—I believe there were.

707. Not of the people concerned in the earlier outrages of the day?—No there was not.

708. Of people concerned in the outrages?—There were people who came into town from the alarm that spread into the country from the proceedings.

709. Were they some of the Orange party that were arrested?—Well, I have no distinct recollection.

710. Mr. Commissioner COFFEY.—Were any of the rioters who began it arrested?—I believe there were none of the rioters arrested.

711. Sergeant Armstrong.—Who were the people that were arrested?—I believe they were Catholics who came in the evening.

712. Do you know anything about it; were you at the sessions the next day?—No indeed.

713. Or at the bench?—No indeed.

714. Do you know that several were sent for trial?—I heard so.

715. You seem to think that it is difficult for a man to forget his principles when he is on the bench?—Well, I think it is.

716. And so to withdraw himself as not to be more or less swayed by his prepossessions?—It was a difficult position to place a man in I believe.

717. What would you propose to do by way of amelioration of the state of things; would you propose to have all Catholics and no Protestants?—Certainly not.

718. Very well, you don't like all Protestants and no Catholics?—I would rather have all parties represented.

719. Do you know of any elements in this neighbourhood to represent the Catholics on the bench?—Well, I believe there are.

720. Did you ever get up a memorial to Government to appoint any?—I had no share in any memorial whatever.

SECOND DAY.

August 17.

Rev. Patrick Quinn.

721. Indeed I know you know nothing about this memorial here. You had nothing to do with it. Did you ever make application to the Government or to the Executive, or take an interest in having some Catholics appointed to the bench here?—I never did.

722. Because you have stated the general impression of dissatisfaction?—Yes.

723. And it would occur to me that a very fair way of testing the reality of that, would be an application to the Government to introduce something like what we call liberality, if you like, on the bench?—Well, I have an impression with regard to the bench, and if you will allow me, Sergeant, I will give you the benefit of it.

724. With the greatest pleasure?—My opinion is, that it would be better for the country if we had paid officials for the benches of all the tribunals.

725. Just so; all paid?—I believe it would; that is my opinion.

726. And I fear a great many share in that opinion, particularly candidates for the appointments?—

Mr. Commissioner EXHAM.—If the salary is good.

Witness.—It would be an eligible thing to look for perhaps.

727. Sergeant *Armstrong* (to witness).—You think there are gentlemen quite entitled, from their social position and wealth, who are members of the Catholic religion, to sit on the bench of justice?—I believe so.

728. I am glad to hear that you think so; but did it ever occur to yourself, or to them, to represent the condition of things here to the Government, with the view of having some of them introduced on the bench, and that as a test of the existing dissatisfaction? You see what I mean is just and reasonable? If there was this very prevalent dissatisfaction, it ought to have found vent on some representation of the kind to the Government or the Chancellor?—I can only speak for myself. I have taken no part in it.

729. You are not aware that such a representation was made?—Well, I heard that a petition was sent forward.

730. You are not aware that there was—you did not join in it?—I am not aware—I did not join in it.

731. I think you said it was in December, 1868, that you left Dungannon?—Yes.

732. You were a good many years—I think some fifteen or sixteen years?—Fifteen years and six months.

733. Among the people here?—Yes.

734. Would you tell me how often you could safely say—and you will say nothing that you cannot safely and conscientiously say—on an average, one year with another, did you hear those drumming parties practising in the town or in the immediate neighbourhood of the town round about? I don't draw a strict line of *ambit* at all?—Well, very often.

735. I will endeavour to bring your mind to it. They sometimes desisted for months?—Yes.

736. And at other seasons, when there was finer weather, and on anniversary times, they would play every evening?—Yes.

737. Taking one time with another during the year round, how often would you say you have heard them—heard them—you say you know so much of the town?—Oh, at certain seasons, two or three times a week. At other times we would not hear them for a month. I think I cannot go closer than that according to my experience.

738. And at all times equally unharmonious?—Well, as to the music I fear no person—

739. Would dignify it by the term at all. Did you hear them a score of times in the year; would you say a score of times altogether?—Oh, yes.

740. Now, during the evening service, was it in the house of worship that the people came back from the Killyman direction and reported something to you?—They did.

741. You did not go out yourself to look at it?—No, but I heard the drumming.

742. You think the better way would be to have paid magistrates all over Ireland?—Well, I think so.

743. And you will have no objection to attend a committee of the House of Commons, and give your evidence to that effect?—Well, I am not—

744. With five guineas a day expenses?—I never like to force myself on the public much. I would rather be allowed to remain in my own private way.

Re-examined by Mr. *McLaughlin*.

745. One question arising out of the cross-examination of the Sergeant. When you say you are of opinion that the fact of the bench being of one class, tends to make it less impartial than it otherwise would be, do you mean to convey that you would not have confidence in a Protestant judge or Protestant magistrate as such?—I would, of course, have confidence in them as such. I object to no man on the score of religion in the performance of his duty; but I say that the system here is unfortunate for the gentlemen who are magistrates. I have nothing personal against any gentleman of the bench; but I say it is unfortunate that the system exists.

746. The Sergeant has asked you several questions, and so far I agree in the Sergeant's opinion. You would be in favour yourself of a paid magistracy?—Yes.

747. Did you ever hear a person say that Catholics of any common sense, if on trial for their lives, would far rather be tried by a Protestant judge, who was a liberal fair man, than by a Catholic who was afraid of his own shadow?

Mr. Commissioner COFFEY.—You need not answer that. I do not know any Catholic judge that is afraid of his own shadow, Mr. *McLaughlin*. I believe they all discharge their duty, both Protestants and Catholics, with thorough independence, and thorough impartiality. I am sure you do not mean anything else.

Mr. *McLaughlin*.—Not at all; and I am very glad that you have given me the opportunity of saying so. I think it right to say in the most exhaustive form of language, that I meant nothing of the sort; but that I meant only to illustrate the strong confidence that there is in the minds of Catholics in the fairness and honesty of Protestant magistrates.

Sergeant *Armstrong*.—There is no pleasing some people.

748. Mr. Commissioner EXHAM (to witness).—On that day in July, 1865, were there any extra police force in the town?—Well, I believe there was, but not very large, as far as I can recollect.

749. Did you see any arrests yourself made that day?—I did not.

750. And I understand you to say that you are not very well able to tell which party was arrested?—Not distinctly. It occurred in the evening, and I was not concerned in that period of the day at all.

751. Were the parties that were arrested afterwards tried?—I think not.

752. You do not know what became of them. You have said that when a party case occurs, the people feel that they are not represented on the bench?—I do say that.

753. That is, in other words, that they would feel more confidence in the bench, provided there were some of their own co-religionists upon it?—Yes.

754. Is not that the feeling?—Yes.

755. No matter what their opinions may be with regard to the resident gentry who are magistrates, they would have more confidence in the bench if there were some of their own creed upon it?—I believe the feeling exists.

756. And I believe it is not peculiar to this town or immediate district?—I agree.

The Court was then adjourned to the following morning at half-past ten.

THIRD DAY.

FRIDAY, 18TH AUGUST, 1871.

THIRD DAY.

August 18.

Mr. *M'Laughlin*.—I think that yesterday the Commissioners were kind enough to recognise the advisability of having the depositions referred to by the witnesses on which the opinion of the law adviser was given. There are two sets of depositions which I am anxious should be obtained, viz., the depositions conversant with the transaction of the 29th April, 1869, and the depositions conversant with the matter of the 16th June, 1871, which were sent forward, and in reference to which there was no prosecution.

Mr. Commissioner *COFFEY*.—You must have them. I suppose they are filed.

Mr. Commissioner *EXHAM*.—If they were sent up, I suppose they were sent back.

Sergeant *Armstrong*.—I directed them this morning to be procured, that is, through whatever instrumentality they could be procured. If the case went no farther than the sessions, the ordinary custodee would be the Clerk of the Peace; if it went farther, the ordinary custodee would be the Clerk of the Crown, and by referring to both you can obtain what is necessary.

Mr. Commissioner *EXHAM*.—I don't know if the Petty Sessions Clerk could have them, if they were sent forward to sessions.

Sergeant *Armstrong*.—I know that the Petty Sessions Clerk has not got them.

Mr. Commissioner *COFFEY*.—Mr. Smith, will you be good enough to send a constable to the Petty Sessions Clerk to say that we would be glad to see him?

Mr. *Newton*.—The Clerk of the Peace is Captain Buchanan at Omagh, and he will either have them within his own authority, or an order to him will produce them.

Mr. Commissioner *EXHAM*.—We will send a communication to him to bring them himself, that will be the shortest way.

Sergeant *Armstrong*.—We have directed them as part of our proofs to be here.

Mr. *Reardon*.—The first information that has been asked for is not in the custody of the Clerk of the Crown or the Clerk of the Peace.

Mr. Commissioner *COFFEY*.—In whoever's custody they are, they will be forthcoming in due time.

Mr. *M'Laughlin*.—I now call on the County Inspector.

Alexander Wilson Hutchinson Heard sworn; examined by Mr. *M'Laughlin*.

757. I believe you are the County Inspector for Tyrone, and have been so for some years?—Yes; some four years, about.

758. Do you know that these drumming parties have been prevalent in this neighbourhood?—Very prevalent.

759. My question relates particularly to Dungannon and the immediate vicinity, and also includes the district round about Stewartstown?—The district round about.

760. I need scarcely ask you whether these drumming parties are calculated to endanger the peace?—Certainly; I consider them the greatest possible nuisance to this county.

761. I believe they are regarded with feelings of disapproval and displeasure by one section of the community and indulged in by another?—By another.

762. Do you know anything in the county which in the same degree endangers the public peace as these drumming parties?—Nothing so much as these drumming parties, and latterly it is become much more so—within the last few months—because the opposite party have got up counter-demonstrations and drumming parties, which will be the means, by-and-by, if they are not put a stop to, through both parties coming into contact, of loss of life in the end.

763. Now, these counter-demonstrations to which you refer—I presume you don't mean to convey that any of them took place in Dungannon?—Not immediately in Dungannon.

764. How near?—Nine or ten miles off.

765. Sergeant *Armstrong*.—Are they in the petty sessions district?—Not in the petty sessions district.

Mr. Commissioner *COFFEY*.—We have absolute evidence that this matter was in contemplation, but that owing to the influence exerted by well minded sensible people it was stopped.

Sergeant *Armstrong*.—I have no objection, except as to the area; I don't want to go into the whole county.

Mr. Commissioner *COFFEY*.—No, we don't, indeed, except as to the leading circumstances.

766. Mr. *M'Laughlin* (to witness).—You have given no note of your evidence to me?—Not the slightest to anybody.

767. You attended court and did not know?—I did not know just now what I was called for.

768. Talking of the area of these counter-demonstrations, would you, from your official knowledge, be apprehensive that the area would be extended so as to include the neighbourhood of Dungannon?—I am quite satisfied it will; I think it is in contemplation.

769. Mr. Commissioner *COFFEY*.—I presume you speak from information?—Just from private information and from my own knowledge.

770. Mr. *M'Laughlin*.—I presume the opinion you have given to the effect, that if this goes on it will almost certainly end in the effusion of blood, is an opinion deliberately formed after an experience of four years in the county?—Certainly.

771. Are you able to say whether or not recently the nuisance, or evil, as you call it, attained greater dimensions than previously?—I say it is increasing every day.

772. On every night, perhaps?—Every night, perhaps, or rather every evening, or at least very nearly so.

773. It is only fair to ask you can you point out any good object in any way attained by these drumming parties—any good object of any sort?—Really I don't know; that is an answer I cannot give. The people themselves know these things, I suppose, better than I do.

774. I believe you are originally from the south?—Yes, Cork.

775. I need hardly ask you whether the executive force of the county would be able to repress these things, if they were authorized to do so?

Mr. Commissioner *COFFEY*.—You may take it for granted that an armed force coming into collision with a mob will always prevail.

Witness.—Well, I should say we could easily do it.

776. Mr. *M'Laughlin*.—Your opinion is that the police, or at least the authorities, could put them down?—Yes, the authorities could, of course, if they chose.

Alexander W.
H. Heard, esq.

THIRD DAY.

August 18.

Alexander W.
H. Heard, esq.

777. What part of the county do you reside in?—
Omagh.

778. About twenty miles from this?—Yes, over
twenty.

779. I believe it is already in evidence—you will
be able to say whether it is correct or not—that at
certain seasons of the year the evil becomes intensified,
in July or August, perhaps?—Oh yes, of course.

780. Did you occasionally have to leave Omagh and
coming to other localities at the seasons of those July
and August demonstrations, I mean in the discharge
of your duty?—Frequently. Of course I come every
12th of July and 1st of August. There are other
occasional visits, perhaps, of the same nature.

781. Of course you think it necessary to come?—I
am obliged to come.

782. There is a place near this called Killyman?—
Yes, there is.

783. Were you present—in your official capacity,
of course—at any large meeting held there lately?—
Well, I have been; I was not at the last.

784. At the one before?—The one before?

785. What was the date of it?—The 12th July,
1870.

786. Where was that?—About four miles off.

787. Was that the same district?—The same
district.

788. Were you in such a position that you could
see what was going on?—Yes, I rode up to the place
to see what was going on.

789. There was a chairman, I suppose, and a plat-
form, and all that?—Oh I did not see that; I just
saw the people marching about all dressed, and all that
kind of thing; scarfs and so on. Arches decorated
across the roads.

790. Had you the advantage of any magistrates in
attendance there on that occasion?—Magistrates
there! Oh the magistrates are all here, not there.

791. But on that occasion did you observe were
any magistrates there?—I did not.

792. I presume you understand me as asking you
whether on that occasion there were any magistrates
to assist in preserving the peace?—Yes, I do.

793. Extending the scope of my question beyond
that, did you observe them there in any capacity, or
any of them?—None in any capacity.

794. Was there a great crowd there?—A very large
crowd.

795. Some thousands?—Oh, I suppose some thou-
sands.

796. When you say you did not observe magistrates
there, I presume you mean to convey that you did not
see them?—I did not see any.

797. I don't mean to say exhaustively, but as a
matter of fact?—I cannot tell you, but I did not see
any.

798. Do you remember being in Dungannon on the
day when the people were returning from the meeting
in Killyman, and when shots were fired?—No, not
when I was here. I do not remember.

799. You can't speak about it?—No, not of my own
knowledge.

800. Were you here on the occasion of any riot?—
Never here at the time.

801. No doubt you heard of such things from time
to time?—I heard of them, but I never was here.

802. It would not be fair to put any question to a
gentleman in your position tending in any way to em-
barrass your relations with the magistrates?—You may
put any question you like with regard to the magis-
trates to me and I will answer it. I know that they
are all exceedingly civil and polite to me; but I never
was inside the door of a magistrate but once since I
came into the county, and you may ask me any ques-
tion you like. I have not been inside the hall-door of
any but one magistrate since I came here.

803. That being a very proper form of mind, might
I ask whether you would conceive it to be the duty of
the magistrates to do all in their power to put down
these drumming assemblies?—Well, I think it is their

duty; and I tell you more—I must say that every day
I had any conversation with the magistrates they ex-
pressed their abhorrence of the whole thing as much as
I did myself. That is only fair to say.

804. Mr. Commissioner COFFEY.—You are refer-
ring to the gentlemen who meet in the Dungannon
Petty Sessions?—I am referring to the magistrates
who meet in the Dungannon Petty Sessions. I think
I have heard very nearly the whole of them. I have
had conversations with a number of them, and they
are all apparently as anxious—I must mention parti-
cularly those I have had conversations with. There
are others on the bench that I have not, but Mr.
Newton and Mr. Lyle I mention in particular. They
seemed to me on every consultation to be as anxious
as possible to get rid of those things and put them
down, as far as their conversation went; that is all I
can say.

Mr. *M'Laughlin*.—It went no farther.

Sergeant *Armstrong*.—Don't say that, because it
went a great deal farther.

Mr. *M'Laughlin*.—It is for you to show that. I
only repeat what the witness said.

Sergeant *Armstrong*.—He did not say that at all.

Mr. Commissioner COFFEY.—You made a comment
in fact on the answer.

Mr. *M'Laughlin*.—One or two words seem to cause
great excitement. I thought my friend was steadier
under fire.

Sergeant *Armstrong*.—I don't want to have the
newspapers misled, and confounding evidence with
statement.

Mr. *M'Laughlin*.—I am afraid my learned friend
dreams of the newspapers.

805. (To witness.)—Can you mention any other
magistrate of the host of gentlemen you see present
who were in conversation with you on that subject?—
Well I can't say any particular conversation. I can-
not remember any other magistrate, but I know I
have been frequently in conversation with Mr. Newton
and Mr. Lyle on the subject.

806. Mr. Commissioner COFFEY.—Was it an
audible conversation that all the other magistrates
must have heard or could have heard?—When I was
here on the 12th July in consultation with them,
trying to do everything that they possibly could to
prevent any collision.

807. Mr. Commissioner EXHAM.—That is the entire
bench?—The entire bench, taken as a body; but I
have had other conversations with Mr. Lyle and Mr.
Newton more frequently than I have had with the
others—in fact outside of that.

808. Mr. *M'Laughlin*.—To prevent collisions?—
Yes; I think they are very much against them. I
am quite satisfied that the magistrates, if examined
there, would give the same evidence that I do, that
they are anxious to put down those meetings, because
they all know that it is the curse of this whole
country.

809. Mr. Commissioner EXHAM.—I understand you
to say that you had general conversations with all the
magistrates on the bench on the subject?—Yes.

810. And independent of that you recollect isolated
conversations with Mr. Lyle and Mr. Newton about
it?—Isolated conversations! I have so much business
that it is impossible for me, for ever going from one
place to another, to recollect everything.

811. Mr. *M'Laughlin*.—Your own opinion is that they
could be put down?—I am quite satisfied that they
can be put down with a strong hand—a determined
hand. I would not be in the least afraid to put it
down. In one season I would put the whole of it
down. If they proceeded with determination they
could put the whole of it down.

812. You say proceeding with determination; you
would not call an incidental conversation with one or
two gentlemen proceeding with determination?—I
would not, of course.

813. I think you said they were a curse to the
country?—I did.

Well, I so entirely agree with you that I will not examine you any further.

Cross-examination of the witness by Sergeant *Armstrong*.

814. Give us some explanation of what you mean by putting down drumming parties with a strong hand?—Well, I think prosecuting them and punishing them.

815. Tell us what you would propose to do?—I tell you I consider them a nuisance, and I would indict them as a public nuisance. Near the town of Omagh they stopped them and prevented them from coming in. They prevented any tar barrels from being lit, and fined them for lighting tar barrels.

816. We have not had tar barrels?—That is the beginning of it.

817. And you would indict them as a public nuisance?—Yes, I think they are—coming into town with their processions and drumming parties.

818. Mr. Commissioner COFFEY.—You mean indictment at common law?—Yes.

819. Sergeant *Armstrong*.—How disturbing the peace?—How disturbing the peace? I think they do disturb the peace.

820. Were you here on the 12th July, 1869?—Yes, I was, I think.

821. I mean in this town?—Yes; I was.

822. Have you been here on each 12th of July since you have been in the county?—On each 12th of July since I came into the county.

823. On every 12th?—Since I became County Inspector of Tyrone.

824. Did the magistrates in anticipation of those days confer with you, and take measures to prevent any breach of the peace?—Certainly, every possible precaution.

825. Did they upon each occasion apply to the Government for additional aid in the way of military and constabulary?—Yes, always. They even applied for more than I thought was necessary on two occasions.

826. You say these demonstrations have been rather increasing?—They are increasing.

827. Becoming developed? Were the measures that they took to prevent breaches of the peace taken with your sanction—did you approve of them?—Yes. I certainly did, as far as I could understand the circumstances.

828. You thought they were judiciously taken?—Yes.

829. Were additional resident magistrates applied for on those occasions?—Yes.

830. And were here?—And were here, and took charge of both police and military.

831. And we all know that Captain Ball himself was here last year—in July, 1870?—Yes; I think he was.

832. Who, do you think, ought to originate the prosecutions with the view, as you suggested, of indicting them at common law? Assuming that such a thing would lie at all, would you expect the magistrates to swear informations themselves?—Certainly not.

833. Who would you expect to swear the informations?—I would expect that the police would swear the informations.

834. And leave it to the magistrates then to act on these informations?—Of course. The magistrates have no right to swear informations.

835. Let me ask you, as far as your observation has gone, with reference to the particular district that we are inquiring about—not the whole county, but the bench of magistrates that is the subject of this inquiry—are you aware of their having, as magistrates, left anything undone that you think they could have done as magistrates to prevent the drumming parties?—Well, I have never been here when men were summoned before the Court, so I cannot tell.

836. You have been here on the leading anniversaries, I understand?—Oh, on the anniversaries I

have been here, and they have done everything that they could do.

837. On the 1st and the 12th principally?—Yes.

838. You have been here on those occasions. Now, as far as your observation of this bench of magistrates has gone—you cannot speak of matters when you were not present—are you aware of any omission or any neglect that you think they are culpable for; could you suggest anything that they have left undone, and that you think they ought to have done?—On these anniversaries?

839. As far as your observation of Dungannon goes, tell me anything that you think they could have done, and ought to have done, and that they did not do?—Well, I am not aware of anything that they should have done, inasmuch as I have been only here on the 12th July, and the 1st July.

840. You are limiting yourself to that. We will deal with individual cases if we can. You have stated as a general proposition your opinion that the authorities should put down these drumming parties; now, would you be good enough to expand the term “authorities” a little, and tell us what you mean?—I think if they were tried and punished severely and made examples of, a few of them, they would soon stop.

841. You have already said, and I believe correctly, that the foundation of such proceedings would be informations?—Informations?

842. And that the magistrates should not make informations?—No; certainly not. They have a right to take them.

843. In the first place the parties should be identified—that would be the foundation of it?—Yes; they are always identified.

844. And the informations should be dealt with according to the discretion of the magistrates?—That is what I think.

845. Is that what you mean by putting them down with a strong hand? Now, have you been much in the Dungannon district save on those anniversaries?—Very little in the Dungannon district.

846. Then when you say that those demonstrations and drumming parties are increasing every night?—Not every night; I don't say that; but they are constantly increasing.

847. But not every evening you say?—Well, I say not every evening. I don't mean to say that I limit that opinion to this particular neighbourhood.

848. That is what I wanted to know?—I go down to different other parts of the country—to Stewartstown.

849. You do not mean to say that as regards the Dungannon Petty Sessions district there has been a remarkable increase of drumming?—No; the borders of Dungannon Petty Sessions district and Dungannon both together, I think. It, and the next district.

850. I want to know your opportunities of observation, because I am told that there is not any increase as regards this particular district?—I have got more reports than I formerly did; that is all I know.

851. I mean have you any personal knowledge of this district of Dungannon particularly, I mean where these magistrates preside, to enable you to say that there has been a remarkable increase, or an increase at all, of drumming?—I cannot say, except that I have got reports more frequently. I am not here.

852. When you got reports what did you do with them?—Send them to Dublin.

853. When they go to Dublin what is done with them there?—Well, I leave that to the authorities in Dublin, to do as they like.

854. They did nothing but blow up the magistrates for not taking a high hand?—I put them off my shoulders. I send them off, and they go to the Inspector-General; and I believe he does the same. He sends them off.

Mr. *M'Laughlin*.—And then they come back again and drum away. That's just the way it is—a very correct description.

855. Sergeant *Armstrong* (to witness).—Were there

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some informations sworn with regard to party processions and returned to the last assizes at Omagh?—There were.

856. I suppose the police promoted that?—Allow me to look at this paper. (Document handed)—Yes, there were.

857. Did the Crown prosecute at all?—There was no prosecution.

858. And the Crown had the management of it?—Yes.

859. You see informations are not always attended with success.

860. Mr. Commissioner EXHAM.—Do you mean, Mr. Heard, that no bills even were sent up?—I believe there were no bills sent up.

861. Mr. Commissioner COFFEY.—Do you know what the reason was that no bills were sent up?—Well, I really cannot tell you the exact reason.

862. If you cannot, don't?—No, not the exact reason.

863. Sergeant *Armstrong*.—Was it not Captain Ball that took the informations in those very cases or some of them?—I cannot tell.

864. Mr. Commissioner COFFEY.—It proves nothing unless we have the informations; for if they went before the Crown Solicitor, and he was of opinion that there was not a sufficient case, from want of identification or other grounds, he would not be discharging his duty if he sent the case forward.

Witness.—I think I recollect myself speaking to Mr. Magrath, and he did not think the cases were strong enough. That was the way.

865. Mr. Commissioner EXHAM.—Before there can be a prosecution the informations usually go to the Attorney-General. He says that there is to be a prosecution or that there is not; and the Crown Solicitor cannot send them up otherwise?

3 *Witness*.—That is the case.

Mr. *M'Laughlin*.—There has been a misconception of Captain Ball's evidence, on the part of my learned friend with reference to those particular informations having been taken by Captain Ball personally.

Mr. Commissioner COFFEY.—Surely that has been fully explained. In practise they are taken down by the petty sessions clerk, and the magistrate swears the parties to them.

Sergeant *Armstrong*.—On some occasions we know that the magistrate supervises and superintends the taking of the informations, to see that it is done correctly; and we shall show, if necessary, that in this particular case Captain Ball took the informations, and I am sure he did so to the best of his ability, and that they are all right.

866. (To witness).—Do you happen to know—and I am not imputing anything to anybody; I am sure he took them to the best of his ability—if Captain Ball took those informations?—I believe, but I cannot positively say.

867. Mr. Commissioner EXHAM.—We will take care to get those informations. Do you know the names of the Defendants?—I can get the names for you, but I don't know them.

Mr. *M'Laughlin*.—This is the information referred to by me of the 16th June in this year.

Sergeant *Armstrong*.—We will show that Captain Ball took every trouble and pains.

Mr. Commissioner COFFEY.—We are bound to assume that the magistrates did everything proper and correct and impartial. Until the contrary be shown it is our plain duty to do so.

Witness.—I am quite satisfied that there was no objection to the manner in which the informations were taken in that case.

Sergeant *Armstrong*.—We don't suggest that. The Attorney-General did not think there was a case to prosecute.

Witness.—That is the whole history of it.

Sergeant *Armstrong*.—We know that the Attorney-General either directs a prosecution or he does not. If he did not direct it, bills would not be sent up.

Mr. Commissioner EXHAM.—We know that when informations come to the Attorney-General, it is in the exercise of his discretion to direct a prosecution or not; so that it may be one way or the other.

Mr. *M'Laughlin*.—*Prima facie* what the Attorney-General directs is done, but not always.

868. Sergeant *Armstrong* (to witness).—May I ask you whether you are acquainted with all the persons of all the magistrates in this district—do you know them all personally?—Personally—well, I do, to speak to them. I know them to speak to them all.

869. On the day that you were at Killyman—the 12th July I believe it was—Mr. Johnston, the member for Belfast was at the head of the Orangemen?—Well, I don't know really.

870. A man of that public character—Mr. Johnston of Ballykilbeg—who came all the way from Belfast?—I heard so, but I did not see him.

871. What were they doing, these men—what were they all to do at Killyman—now that we have got into it—were they making speeches?—Really all I know was that drumming—unmeaning drumming—was going on, and that people were marching about.

872. Were there any speeches—because it would be a hard thing for Mr. Johnston to be there and not to speak?—I don't suppose I was in time for the speeches; I lost the speeches.

873. You came in for the overture?—The music part of it was all that I came in for.

874. Now, do you know that there were on that day in the town of Dungannon here, two resident magistrates?—I know there were.

875. Would you have thought it a right thing to have brought artillery and fired on the crowd?—Oh no, that's not the way.

876. That's what I would call a strong hand; what would you? Would you think it was to do anything but what you did, namely, ride about on your horse and smoke a cigar?—No, I don't smoke, fortunately.

877. You don't fire in the face of the enemy. Do you think it would have been wise to do anything but what was done?—Well, when it went so far as that, it would not be wise.

878. Will you tell us the precautions that were taken on that very day—were the constabulary posted, were the military stationed, and everything done with the view of preventing a row?

879. Mr. Commissioner COFFEY.—In other words what was done to prevent two hostile mobs from closing with each other and breaking heads?—The police were drawn up so as to prevent collision—in fact, the others were in too great numbers to interfere with them.

880. Sergeant *Armstrong*.—Did you think the measures taken to prevent a collision as effectual as the resources would permit?—At that time, of course, it was—you could do nothing else.

Mr. Commissioner COFFEY.—It was successful for the purpose?

881. Sergeant *Armstrong*.—There was no row?

Witness.—Not the slightest appearance of it.

Mr. Commissioner COFFEY.—Her Majesty's constabulary formed a third force, and were stationed between two opposite factions anxious to come together and break the peace.

882. Sergeant *Armstrong* (to witness).—You are under the impression that the other party are going to get up drumming?—I have heard reports that they have got them up.

883. So as to bring matters to a crisis?—Exactly; to try to bring matters to a crisis if possible.

884. So that something afterwards must be done in the way of legislation. I suppose its your opinion, from your knowledge of the matter, that the legislature ought to interfere? Don't you think some Act of Parliament desirable to put an end to those exhibitions altogether?—Indeed I think it would.

Re-examined by Mr. *M'Laughlin*.

885. The Sergeant has asked you do you think it necessary that an Act of Parliament should be passed? Do you believe that a resolute man in the present state of the law could put them down—do you adhere to the opinion given on your direct examination?—Well, I think when they are brought before the magistrates if they were severely dealt with for appearing in these processions—severely dealt with at the assizes—it would deter them.

886. You have already given your opinion to the Sergeant about an Act of Parliament being desirable; I would ask your attention—?—You know I am no lawyer, unfortunately.

887. Your common sense is not perverted?—That is all. I have to study too many Acts of Parliament, I am sorry to say.

888. Do you agree now in this opinion of the law adviser as to the present state of the law—you are asked your opinion as to the necessity for a new Act of Parliament:—"Every assembly of a number of persons, which from its general appearance and accompanying circumstances is calculated, in the opinion of reasonable men, to excite terror and alarm, or to produce danger to the tranquillity and peace of the neighbourhood, or to lead to a breach of the peace, is an unlawful assembly, and every person concerned in it is indictable at common law for a misdemeanor"?—Well, that ought to be sufficient.

889. You think so. Lest that should not be strong enough—and it is important that you should know it—I would ask you if you agree in the exposition of the law given by Chief Justice Monahan of the Common Pleas, in a case in which my learned friend and I had the honour of representing the Inspector-General. His lordship says:—

"If any number of persons entertain a respect for any event of former times, or for any event of modern times, there is no objection to their celebrating that in the ordinary way by marching with drums, provided only that their so doing is not productive of ill-feeling, and not calculated to produce a breach of the peace. It is perfectly right and proper for a number of men to associate and to walk together in celebration of an event of that description, so long as others don't take offence at it; but when once, from the nature of the case, it becomes offensive to others, and the parties taking part in such celebrations know that they are offensive and will produce ill-feeling and probably tend to a breach of the peace, I think such assemblies, no matter how innocent originally, are illegal and unjustifiable."

Now, would it not be your opinion as a sensible man of common sense, that there is law enough there, without an Act of Parliament, to enable the authorities to put down those dangerous exhibitions?—Well, I suppose there is.

890. I think so. Now, you said very fairly, in answer to my learned friend, that at the time when that aggregate assemblage was there, it would have been dangerous to have interfered to prevent them?—Yes.

891. At that time? Give me leave to ask you whether or not the manner in which these aggregate assemblages are got together, is by the marching from particular districts of little contingent parties, who all meet and form a monster assembly?—Well, I think it is. Of course it must be.

892. On all those occasions don't Dungannon and certain other places in the vicinity of Dungannon—Donaghmore, for instance—send forward contingents, as a rule, as far as you know?—They do. They go from all parts of the country.

893. Those contingent parties going from all parts of the country—among the rest, Dungannon—aren't they comparatively small when starting, I mean numerically?—They are.

894. Your observation is, that the impossibility of interfering with the aggregate body would not apply to those small contributory bodies?—No, but they don't form the procession until they get—

895. Don't they go in a body—I don't mean to say

all dressed out like prize cattle—but don't they go in a body?—Well, they go scattered about in such a way that you could not legally stop them. They just go as any other men going to a fair, or place, and then they assemble afterwards at a given point. That is my idea.

896. Do people in this part of the county generally go to fairs with drums?—No, they don't.

897. I presume the drums accompany those who carry them?—They do; but they scarcely begin to play until they come near Dungannon or somewhere.

898. Until there is somebody to hear it?—Yes, they do not like to waste their music on the desert air.

899. As I understand it, the measures that were taken were taken to prevent two hostile parties from coming into collision?—Yes, that was the object.

900. Tell me, Mr. Inspector, is there anything that would entitle the Orange party to walk in this absurd way in procession that would disentitle the Catholic party, if they were foolish enough to do so, from walking in the same way in procession?—Not the slightest in the world.

901. How does it come to pass that the only object of the authorities is to prevent collisions—that is to say, that they only put down collisions, for it comes to that; doesn't it look odd in the eyes of ignorant men?

Mr. Commissioner COFFEY.—I don't think you have a right to put it in that way, Mr. *M'Laughlin*, for it is calculated to produce a very mistaken impression. Everybody knows, without going into the formal question necessary to elicit an answer, that it is the duty of every government—of every governing body—when a number of parties are assembled, to use the force at their disposal for the purpose of preventing a breach of the peace. It is quite another question whether by anticipation those crowds ought to be prevented from assembling when their direct object is calculated to provoke annoyance and to provoke a breach of the peace.

902. Mr. *M'Laughlin* (to witness).—Just so. May I ask you is it your opinion, having regard to the fact, that the eventual assembling of those persons is calculated to excite others, and to provoke a breach of the peace—in the words of Mr. Commissioner Coffey—that it would be the duty of the authorities to prevent them from assembling in that offensive and dangerous way; prevention now is what I am talking about; what is your opinion as to that?—I think it would be their duty to do it, but it would be very difficult to do so.

903. Mr. Commissioner COFFEY.—Unless they had most active and vigilant local co-operation?—Certainly, they should require that.

Mr. Commissioner COFFEY.—The two things are necessary.

904. Mr. *M'Laughlin*.—There is no central executive giving orders on paper and sending them through the post-office that would be available to do away with those things unless the local authorities were thoroughly in earnest; is not that so?—Yes, it always commences with drumming parties long before July, and I would put a stop to the drumming parties first, that's my idea. That is the foundation of it all; that is what keeps it alive.

905. But now in the result that is not done; and is it not the fact that it is only when the evil has attained ungovernable dimensions that the magistrates then interfere to prevent the collision of hostile parties; is not that so?—Well, I cannot answer you that.

906. Can you mention any other object for which the enormous body of police and forces that you had was used on the occasion in question?

Mr. Commissioner COFFEY.—It is perfectly apparent—everybody concedes that when you get a large assemblage together it is the duty of the authorities and the Government, as long as they are a government, to have a force at hand to prevent the consequences that result from these things.

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Mr. Commissioner EXHAM.—No one can shut his eyes to what took place not very far from this on the 12th of this month. Sixteen hundred military and police were there to prevent by anticipation a collision, and the Government tried further preventive means by issuing a proclamation to stop the thing altogether, and to prevent the parties from even coming together.

Mr. *McLaughlin*.—I presume, sir, that you refer to the case of Londonderry.

Mr. Commissioner EXHAM.—I do.

Mr. *McLaughlin*.—But I would remind the learned Commissioners that we are now on the subject of the co-operation of the local forces.

Mr. Commissioner EXHAM.—Certainly.

Mr. Commissioner COFFEY.—We are on the subject of your re-examination.

Mr. *McLaughlin*.—Surely, I am not stirring one inch from the questions put by the Sergeant, and I am at the last of them.

907. (To witness.)—The Sergeant put the question to you whether or not certain places he mentioned were contained within the Dungannon Petty Sessions district. You have also said on your re-examination that you had several conversations with Mr. Courtenay Newton which tended to show his desire to put down these affairs. Do you think that the peace of Dungannon would be endangered more or less, and necessarily, by drumming parties just on the very borders of the district—don't you know that it would?—I told you before that they would tend to create disturbance, and of course in whatever part of the county they are it will in the same way, have the same effect.

908. Then, in your opinion, as an experienced officer knowing the county well, it would not be a desirable thing to sub-divide a barony into districts, and to let drumming parties have free scope on one side of a ditch, and prohibit them on the other side of the limit—you would not think that would be a safe way to preserve the peace?—Well, I don't understand you exactly.

909. A new Act of Parliament has been spoken of by the Sergeant. Would you think it a desirable thing that there should be an enactment in that act, that, we will say, at the distance of two miles from Dungannon, they should be allowed to walk, but not nearer?—I should not allow them to walk anywhere.

910. Mr. *Barry*.—I think it has been cleared up already; but in reference to that observation it is necessary that the matter should be made quite clear. You stated that for some time past counter drumming parties have been got up on the Catholic side?—Yes.

911. I think you said also that they did not take place in the immediate neighbourhood of Dungannon?—I did.

912. Sergeant *Armstrong*.—One question. Your opinion appears to be that the proper way to strike at those great demonstrations, as you call them, is to strike at the drumming parties?—I think so.

913. That is the way they are kept up?—I think that keeps up the disturbance.

914. Now, how would you propose, as a practical man, to put an end to the drumming parties in the absence of legislation, with new machinery—what would you do—would you have informations sworn?—I would have informations sworn, of course.

915. Take the case of half a dozen fellows met by appointment at cross roads?—You will never meet half a dozen.

916. Oh, of musicians who attract a crowd of fifty or sixty persons, and who play there, and there is no danger of any collision. Treating that for the purpose of the present argument as an unlawful assembly, what would you propose to do in reference to it? Would it be to have informations sworn, or to have them identified first?—Identified, of course.

917. Who should identify them?—The police, and they always do.

918. And who should swear the informations?—The police should swear the informations.

919. And then the magistrate's duty attaches?—We should have done our parts then on the part of the police.

920. And then let the magistrates deal with them?—Let them deal as they think proper with them. They are better judges than I am.

921. Mr. Commissioner EXHAM.—Since you have been here as County Inspector, there has always been in Dungannon, I suppose, a resident magistrate?—No, not always; Mr. Ball was the first.

922. I thought Mr. Molony was here?—He came here, but he had the other part of the county to attend to. He lived in Omagh, and attended here at Petty Sessions.

923. Up to the time you had the conversations, did any resident magistrate attend on those occasions with the others?—Oh, yes, there was always a resident magistrate.

924. And I suppose since Mr. Ball came here as a resident magistrate he attended at those conversations too with the other magistrates?—Yes.

925. And the magistrates and you had the benefit of his advice?—Yes.

926. Just as any other of the magistrates?—Of course.

927. Now, who were the two resident magistrates who were here on the day you have alluded to, of that great meeting at Killyman?—

Mr. *Smith*.—Mr. Hort and Major Forbes.

Mr. Commissioner EXHAM.—This was the last 12th of July. I thought it was last year that you alluded to?

Sergeant *Armstrong*.—Mr. De Gernon and Mr. Ball were here in 1870.

928. Mr. Commissioner COFFEY.—Are you a magistrate yourself?—

Witness.—No.

929. But this whole county is under your supervision, as I understand?—Yes, it is.

930. You have said that you have no doubt that these drumming parties are calculated to provoke a breach of the peace?—There is no doubt of it.

931. Am I right in suggesting that they are regarded as a challenge to the other party?—Well, I really consider them as nothing else but that.

932. A challenge?—I do really consider them as a challenge.

933. And your decided and deliberate opinion is, that they are calculated, more than anything else you are aware of, to provoke disturbance and illwill?—Certainly.

934. Now, having that opinion deliberately formed, would you think it the duty of the magistrates on all occasions, publicly to rebuke exhibitions calculated to provoke those public disturbances, which they are charged to prevent?—Certainly, it is the duty of the magistrates.

935. In every possible way, openly and publicly, to discountenance them?—I cannot state that any individual magistrate did; but really the magistrates do discountenance them, particularly where I am, up in the North. At Omagh they won't allow them.

936. I have heard you state that with the greatest pleasure and satisfaction. I may say for myself, from my own individual opinion and experience, that in the part of the country where I am officially obliged to visit, the magistrates, without distinction of creed or opinion, unanimously came to that conclusion, and authorized me unanimously from the bench to discountenance them, saying, that they were provocative of the greatest possible disturbance and annoyance and illwill, and that they themselves would publicly and privately discourage and discountenance them in every possible way they could; so, as I said before, I have heard with pleasure you state that that appears to you to be the desire of every single gentleman of this bench that you came in contact with?—That is their opinion; I have heard them express it.

937. Do you think now that, with a view to prevent those disturbances, and to prevent those irritating demonstrations, the police should be put in a condition, by observation, to know the parties who compose those drumming demonstrations?—So they do.

938. Would not you think it to be the positive absolute duty of the local force to be in a condition, although they would not interfere, on grounds of public policy and public safety by going in amongst an excited number of people and arresting them—to take down their names, and be able to identify them as composing those parties?—They have instructions to that effect, and they invariably do it. In the case of almost every drumming party—unless it occurs at an hour of the night that they cannot be identified—I always get the names, and send them on; and I state in my report that a certain number of them—whatever names the men give me—can be identified as composing it.

939. A further question, when they are identified, do you await instructions from the magistrates to summon them before the bench?—Allow me to tell you, that is the instruction I get from the Inspector-General, and give to the police of this county—that they should be most particular in identifying all the persons that compose these drumming parties.

940. And then it is the spontaneous action of the police to bring them before the magistrates, and for the magistrates then to act?—No.

941. How is that?—They generally go to the magistrates, and ask their opinion as to what they should do. We generally then submit their names, and ask for instructions from Dublin to see what is to be done.

942. That is what I want to understand. Do you receive any instructions from Dublin to enforce by summons proceedings against those parties, or have you a right to come before the local authorities without in the first instance communicating with the authorities in Dublin?—We have a right to summons, of course, any man we consider to be committing any offence; but the usual course is to submit the names and the number of the parties, and the offence they have committed, and to know what proceedings will be taken; and we are always governed by it.

943. Who do you submit that to?—It goes to the Government. The Inspector-General never keeps a file. He always sends it on to the Government office, and I receive it back again.

944. Mr. Commissioner EXHAM.—I believe I am right in saying that you first receive the Sub-Inspector's report, and you then, with such observations as you think right, forward that report to Dublin for instructions?—For instructions?

945. To the Inspector-General at the Castle, and he sends an intimation to you as to what is to be done?—The law adviser's opinion is put on it in red ink, and we are governed by that.

946. Mr. Commissioner COFFEY.—In your experience, is it a usual thing for the local magistrates to communicate with the police—I mean, suppose now, with reference to any apprehended disturbance—is it the practice, as far as you are aware of, for the local magistrates to communicate with the officers of the Constabulary, pointing their attention to the existence of those things?—Of course, it is; I believe it to be the duty of the magistrates to do so.

947. Sergeant *Armstrong*.—And they do so?—I could not give you any particular instance.

948. Mr. Commissioner COFFEY.—As far as I understand Mr. Heard's evidence—we will go more closely into the matter by-and-by, in the general evidence of

the police—at the large anniversary demonstrations there are two or three magistrates assembled here, and their duties appear to be sufficiently discharged if they prevent collisions, and they could do nothing else, for it would be madness to bring an armed force against them?—Lives would be lost.

949. Mr. Commissioner EXHAM.—But, Mr. Heard, in regard to those drumming parties which go on weekly almost, don't you receive reports with regard to them?—Yes.

950. Are not these reports also sent to Dublin Castle?—They are always sent to Dublin.

951. And then you receive back your own report with directions on it, as you say, in red ink?—I can give you the list of them here.

952. Sergeant *Armstrong*.—Allow me to ask you a question on this matter of identification—it is very important that the police should be in a situation to know parties—is there a modern practice introduced into the Constabulary of shifting a man rapidly from one quarter to another, instead of allowing him to remain in the same place?—Not at all, quite the contrary; the Inspector-General is quite opposed to shifting men if he can, but we must move the men when they don't suit the place.

953. Is there a general rule that the force is to be permitted to remain in one locality?—So as to be well acquainted with the people—that is the rule.

954. Mr. Commissioner EXHAM.—And then the instructions are to the men who are placed in the locality for the purpose of best identifying the people, to report to you through the Sub-Inspector?—They report to the Sub-Inspector, and he reports to me.

955. Sergeant *Armstrong*.—And you to the Inspector-General?—Yes.

956. And then the red ink comes down?

957. Mr. *Barry (through the Court)*.—The witness has just stated that the persons who are engaged in these drumming parties are invariably identified by the police. We had Captain Ball's evidence here yesterday directly stating?—I cannot say invariably; there must be isolated cases where they are not.

958. I don't want to pin you to that answer for a moment, but a drumming party came before Captain Ball's house on the 24th of February; now that was a very aggravated case—a drumming party coming before the house of the resident magistrate, and drumming there for a couple of minutes together—I want to know whether the parties were identified on that occasion, and a report of it sent to the Castle?—The Sub-Inspector, if examined as to that, can give you a better idea, because I receive so many of them from the officers that really it is impossible for me to tell any particular one without going to my books.

959. Mr. *McLaughlin*.—Would the Commissioners ask the witness this question—how many men have been identified within the last two years, as having taken part in drumming parties?—I could not tell you; there are so many that I could not tell you.

960. Mr. Commissioner COFFEY.—The whole reports of the county pass through his hands?

Witness.—But I know several—I may say hundreds altogether—

961. Sergeant *Armstrong*.—Have been identified?—I am quite satisfied of it.

962. Mr. *McLaughlin*.—The shifting of the men is entirely in the hands of the County Inspector?—Entirely so, but on their own application; there have not been twenty men these twelve months removed out of this county, nor twelve men without their own application.

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Rev. Francis
Devlin.The Reverend *Francis Devlin* sworn; examined by Mr. *M'Laughlin*.

963. You are parish priest of Donoughmore?—Yes.

964. That is near Dungannon?—Within two miles of it.

965. How long have you been parish priest of Donoughmore?—Nearly twenty-seven years.

966. And I have no doubt that you know the locality very well during that period?—Yes, day and night.

967. Have you heard these drumming parties in your neighbourhood?—Oh, yes.

968. Are they very common?—We get a turn of them generally; when they visit Dungannon, we have the tail. At the meeting at Donoughmore—

969. You mean drums?—Drums large and small.

970. The “pulpit drum ecclesiastic” among the rest, I suppose?—They honour me with music of that kind.

971. How often, as near as you can go, on an average do these people perform in your neighbourhood?—After the days of July and a little before it. They are not very frequent, but I suppose the amusement goes on round one place or another once or twice in the week I suppose. Once a week I suppose during the days preceding July, and the days that follow immediately afterwards. They are now beginning to be more frequent.

972. I believe you know, and we all know, that these demonstrations are only taken part in by one class of the community?—That is so.

973. Do you know whether those exhibitions are offensive to the Roman Catholic population?—They excite them extremely, in general.

974. Is it your opinion that they create alarm and terror?—Yes; so much so that consequences follow.

975. Of what character?—Disastrous.

976. Be good enough to state the particular consequences that you so describe?—People sick, and people nervous and in a delicate state of health suffer, and women in the family way. Premature births and miscarriage—these follow.

977. But confining your answer to consequences more public and less domestic, what consequences follow as regards the feelings of the people?—Why, they commence to take it into their own hands when they cannot obtain redress. They believe that the laws of the country are to protect all her Majesty's subjects; and these matters have given offence to them.

978. Sergeant *Armstrong*.—That is too general?—Well, I am speaking of the feelings of the people; and they say then, that when they don't obtain redress for this temptation to sin, anger, wrath, and misery to themselves and others, “we must take it in hands ourselves.” I set my face at all times during the last four years that I am on duty here against this, still it has happened around Dungannon.

979. Do you think those assemblages calculated to promote a breach of the peace?—Directly.

980. Have you known occasions on which, to your knowledge, they have provoked breaches of the peace?—Certainly—eyes knocked out; ribs broken; and wounds suffered; these are clearly demonstrated matters that came under my notice.

981. Now, I want to ask you whether or not, confining your answer to your own personal feelings, these displays are offensive to you personally?—Why, on account of the dangers by which they are surrounded, in consequence of the foolish people taking in hands to redress their own grievances I was in tremor of them very much indeed—very uneasy about it.

982. Do you know anything at all which so imminently tends to endanger the public peace as the prevalence of those drumming parties?—These drumming parties are exceedingly dangerous to the public peace by day and by night—especially by night; for a case came before me last Saturday—a most respectable woman came to me—

983. Sergeant *Armstrong*.—Don't mind that.*Witness*. She was a sufferer. A poor man, after his day's work, working very hard—he goes to bed about nine o'clock.984. Mr. *M'Laughlin*.—Are these exhibitions on the increase?—I am very much afraid they are on the increase.

985. And you would be in favour of putting them down?—I would be very happy to see them reduced to peace and order. The majority themselves of these wild people would be happy to have them regulated. I have it from their own mouths.

Cross-examined by Sergeant *Armstrong*.

986. I believe the drumming has interfered with your hearing a little?—Indeed not much—not at all.

987. Do you hear the drums?—I did heretofore, and I suffered a great deal.

988. I understand they have actually deafened you, and I am very sorry for it. Have you not one advantage in not being able to hear the drums?—At all times you can hear it, it is so loud.

989. Are you able to hear the drums?—Quite well.

990. I suppose you don't know what tunes they are playing?—Indeed I often well understood the tunes they were playing.

991. Would you allow me to ask you, did you complain to the police about them?—Never. I don't remember.

992. You don't remember?—No. I complained to the neighbouring magistrates sometimes, and they did all they could to regulate them.

993. They did all they could to regulate them? Don't you believe now, in your heart, as an honourable gentleman, that the magistrates of the neighbourhood are most anxious to put an end to them if they knew how?—I should think they are as great a nuisance to the magistrates—to some of them at least—as they are to myself.

994. I assure you, sir, that is their unanimous opinion?—I say some of them.

995. Mr. *M'Laughlin*.—He says some of them?—Yes.996. Sergeant *Armstrong*.—What means would you suggest for putting an end to the drumming parties?—Why, the simplest thing in the world.

997. Tell us how?—Determination on the part of the magistrates of the district would soon put them down.

998. Would you expect the magistrates to go out and watch them?—If they have not means in their hands let them ask for more powers.

999. Where are they to get it?—From Parliament.

1000. Would you allow me to ask you, as a man of sense, would you expect the magistrates to go out and watch who the drumming parties were, and swear informations against them?—With these parties—

1001. Answer that?—With the parties that are the guilty parties, I consider that our magistrates have very large power over them.

1002. Do you hear what I am saying to you?—I do, very well.

1003. Would you expect Mr. Lyle, for instance, who is a neighbour of yours, to go out in the dark and watch those fellows, and then go and swear informations against them?—I would not expect Mr. Lyle to do what I would not do myself.

1004. Don't you think it might lead to a breach of his head?—Indeed it might.

1005. Don't you think that the police do identify them as far as they can?—I don't know much—the police in Donoughmore are very vigilant men indeed; at

least I was inquiring of some of the chiefs of them, and they told me of a hundred or two hundred persons in the dead of the night; and I expect that they would not go and endanger their lives when they could do no good. They could not take names in the darkness of the night.

1006. Are you acquainted with the way in which these drumming men collect together—how they come dodging along the cross-roads and ditches, and meet at a given point?—They do.

1007. And there is no crowd till they meet at the given point—is not that the fact?—They do gather in small parties.

1008. In small parties, in different ways, and meet at a given point, and they play there when they get there. If you saw two or three of them coming with drums, and they were not playing by themselves, to meet others half a mile away, would you arrest them?—If I had force I would, of course.

1009. If you had power to arrest them?—I would, most decidedly.

1010. Would you have men out in all directions and places watching to arrest them all before they meet at the cross-roads?—The grand matter would be that I would not allow them to concentrate—I would not allow the numbers to get above my power.

1011. You would have policemen watching at every imaginable point?—I don't know, sir. The police should be vigilant indeed.

1012. How would the police know where they would meet?—That is their occupation. Don't you think it would be a disgraceful thing to say that a parcel of rustics would out-general her Majesty's royal police?

1013. I think it would; but they manage to do it sometimes by doing that. Did you ever see a party of twenty fellows at a cross-road beating drums?—Twenty?

1014. Or thirty?—I did, and more than five twenties.

1015. Did you ever see a party of a hundred?—Yes.

1016. Isn't it a fact that that crowd is made up of a great number of small parties of twos and threes, and half dozens, coming from different points?—No doubt of it; several rivulets flow into that great ocean.

1017. Would you have the police stopping all the rivulets?—I don't ask the police to do what is impossible, but I ask them to do their duty; and I am sure the magistrates would be inclined to suppress those matters—I hope so—and let us have peace. That is the wish of all good people to my knowledge; all they require is to live in peace, and not to be drummed up at night.

1018. Is there a village called Donoughmore?—Yes.

1019. Do you live in it?—I do.

1020. Except on the anniversaries of the 1st and the 12th, do they ever drum through Donoughmore?—No.

1021. Is it out of the country they occupy?—Oh, they drum round everywhere.

1022. I am asking you about the little village of Donoughmore?—They don't visit so often that way, because the contrary party met them once, and it was attended with very bad consequences to both—legs, and arms, and eyes. I don't wish to have our people provoked to take the law into their own hands.

1023. It is only on the 1st and the 12th that they march in a great body through the town?—Yes, about that time.

1024. And on the other occasions they are always in the country at different cross-roads?—Yes.

Mr. Commissioner COFFEY.—As to Donoughmore, he says the reason of that is that when they attempted it once before there was a row, which we have mentioned here, and—

Sergeant *Armstrong*.—They got the worst of it.

1025. Mr. *McLaughlin*.—You said, in answer to my learned friend, that the magistrates, you think, consider it as great a nuisance as you do. Did you ever, Mr. Devlin, say that if the magistrates would only hold up their finger in real earnest this reign of terror would be put down?—I believe they have that power.

1026. Did you ever say that—did you not say that if the magistrates only held up their finger, in your belief it would be put down?—In earnestness and seriousness, yes. That's what I say, and I believe it, because I think the people are not so demoralised as that they would not obey the laws coming from them.

1027. I believe you were some time in France?—Yes.

1028. An abbé there. Did you ever say that the prevalence of these drumming parties, and the impunity given to them, constituted a reign of terror here—did you ever use that expression?—I have experienced it often myself, and I believe it to be perfectly true.

1029. And you think the whole thing would depend on the earnestness and seriousness of the magistrates?—Largely. I don't think the rebels against their will would be many. I think they would be easily counted.

1030. Would you think that the circumstance of those who take part in these demonstrations being of the same party, I believe, with them, religious and political, would help the magistrates to put them down, if they were in earnest?

1031. Sergeant *Armstrong*.—Do you think there is any illegal conduct on the part of your parishioners—your peculiar people? Do the Catholics of your parish ever commit any illegalities at all of any sort or kind?—I don't remember, for the last twenty-six or twenty-seven years, any particular illegality they were guilty of except in two or three parts gambling in public-houses.

1032. Or little fights?—I consider these of a large magnitude, and I got them scattered so as not to gather again there.

1033. Have you as much influence amongst your own people as the magistrates have amongst the Orangemen, or more, to be exercised for good?—It is pretty much the same, I think.

1034. The same?—I think so.

1035. Is there any sin in your parish at all?—Any sin?

1036. Any sin amongst your people?—There is—as plenty as blackberries.

1037. And do you suppose that every rowdy Orangeman would stop beating a drum because the magistrates wished him to do it?—There are a variety of sins, you know. There are not less than seven grand ones, you know.

1038. Do you think that rowdy Orangemen would attend to the advice of the magistrates? Don't you think there are rowdy Orangemen who would not take the advice of any magistrate under the sun?—I don't believe it at all. I think the great majority would take advice and counsel from them.

1039. Are you sure you are not mistaken?—Not at all. Our people of all classes and creeds are not demoralised to that extent.

The witness withdrew.

THIRD DAY.

August 18.

Rev. Francis Devlin.

Mr. *Hugh Murphy* sworn; examined by Mr. *McLaughlin*.

Mr. *Hugh Murphy*.

1040. I believe you are a resident in Dungannon?—Yes.

1041. And have resided here, I believe, for —?—Nearly forty years.

1042. What is your business?—A watchmaker and jeweller.

1043. In what part of the town do you reside?—Market-square.

THIRD DAY.

August 18.

Mr. Hugh
Murphy.

1044. The principal part of the town?—Yes.

1045. I believe you are of the Catholic religion?—Yes.

1046. Do you know whether the drumming parties, about which we have been hearing so much, are prevalent in this neighbourhood?—I do. I know they are very prevalent occasionally.

1047. About how often do you hear them?—Well, I could not exactly say, I hear them very frequently.

1048. I suppose they hardly ever cease?—Oh, they do occasionally.

1049. Occasionally they do—like the man's servant who has been seen frequently sober. Are these exhibitions offensive to you as a Catholic?—Certainly.

1050. I suppose I may ask you whether you know if they are offensive to the body of your co-religionists as Catholics?—I hear complaints to that effect generally.

1051. Do you conceive them to be calculated to excite bad feeling, and terror, and alarm, among the people of your communion?—Not the slightest doubt of it.

1052. As far as you know, is the feeling that I have been speaking of, confined to any class of the Roman Catholic community—is it confined to the very lowest class?—It is the general opinion from what I can learn—as far as I could learn.

1053. Without unduly praising yourself, I suppose you would say I am right in assuming that you are one of the most prominent Catholics, socially, in Dungannon?—Oh, I don't know. I have always paid my way.

1054. I believe you have some house property?—A small portion.

1055. Do you think that these drumming parties, having regard to the feelings they excite, tend to endanger the public peace?—I do, without a doubt. I saw it more than once.

1056. Then your opinion is founded on facts, within your own knowledge?—Yes.

1057. Now, living here for the last thirty-five or forty years, of course you were here in July, 1865?—I was.

1058. I believe the Orangemen came into town that day?—Yes, a large number of them.

1059. Did you observe any arms amongst them?—I did. They had scythes, pitchforks, grapes, and bludgeons in great numbers.

1060. They were things that would hurt a man if they were put into him?—Upon my word they would.

1061. At what side of Market-square do you live?—At the bottom of the square.

1062. That is, a line drawn from Church-street would pass your house?—Just so.

1063. Did you observe if they came up Church-street?—They came up Church-street and turned down Scotch-street. I was looking at them from my own door.

1064. Do you live near Irish-street?—I am the last house from Market-square.

1065. On the Irish-street side of Scotch-street?—Decidedly.

1066. They turned down Scotch-street. Did you think that exhibition calculated to excite alarm and terror?—Without a doubt it was. I went up stairs and barricaded my front windows.

Mr. *M'Laughlin* (to the Court).—Did you hear the last answer?

Mr. Commissioner COFFEY.—If we depend on the evidence of Mr. Heard, the county inspector, I look on that question as a matter of form.

Mr. *M'Laughlin*.—But the answer is rather a signal one. He says he went up stairs and barricaded his own windows.

Mr. Commissioner COFFEY.—You are talking of this exhibition in 1865, the features of which we have already had detailed to us, and which unquestionably was a riotous assembly. Of course it was calculated

to create terror and alarm while going on. Very considerable terror.

Mr. *M'Laughlin*.—What right have you to assume that it is for that object I am bringing out the fact?

Mr. Commissioner COFFEY.—Not the slightest, only if I did not mind what the witness was saying, the reason was, that my mind could not take in any more.

Mr. *M'Laughlin*.—I respectfully ask you, notwithstanding the occupation of the premises, to take the fact that he barricaded his window.1067. *To witness*.—You barricaded your window?—Yes.

1068. I suppose you don't keep your watches in the upper rooms?—No.

1069. I suppose you considered that a prudent precaution at the time?—I did.

1070. There was a great commotion that night? Now, you know where John Hayden lives?—I do.

1071. This man?—I know the gentleman. I know where he lives.

1072. He is only a publican, don't call him a gentleman. Did you see Mr. Hayden's house afterwards?—I did. About three hours after the wreck I was down through Irish-street and round by Hughes's hotel.

1073. That is now Moon's hotel?—Decidedly.

1074. Did his house seem much improved by the treatment it got?—It seemed to be a general wreck.

1075. It was well ventilated?—As far as the windows were concerned, and some of the frames.

1076. Now, since that time have these drumming parties been frequent?—As frequent and as usual as before, just.

1077. Have they been always regarded with the same animosity by the Catholic portion of the population?—Since I was a boy.

1078. And I believe breaches of the peace are apprehended whenever they take place?—They are.

1079. Do you think that that feeling, I mean the feeling on your own mind, and on the part of those of your own communion, is increasing or lessening?—Well, I think it is increasing latterly.

1080. Does it arise from the increase of those drumming parties?—I would think so.

1081. Are you able to say whether any influential Catholics took part in repressing the rising intention on the part of the humbler members of your faith to have counter demonstrations?—Well, I can't say. I took no part connected with it, but I have no doubt that if things go on as they are, such things will occur.

1082. They will escape from your influence?—Yes.

1083. Mr. Commissioner COFFEY.—He says he did not take part in it himself.

Witness.—I did not hear directly that such a thing was getting up in the neighbourhood of Donoughmore, but I heard that such things were got up in other districts of the country.

1084. And you apprehended the same thing?—I apprehended that the same consequences might occur here if things are not brought to a termination, if the offensive displays of the drumming parties are not brought to a stop. Such is my opinion.

1085. Mr. *M'Laughlin*.—You know where your chapel is?—I do.

1086. You know Dr. Shane's house, close to the chapel?—I do.

1087. Do you remember five or six years ago, on the 12th of July, seeing the Orangemen there?—I was going to Dr. Shane's house, to his clock.

Sergeant *Armstrong*.—Fix the year of this, for we may be obliged to resort to the petty sessions books.1088. *Witness*.—I don't exactly remember the date. I cannot remember the date. It is something within the last six years or so.1089. Mr. *M'Laughlin*.—It is intended to support No. 1 in our particulars. (*To witness*).—What was the character of the crowd that you saw there?—I was going to Dr. Shane's, beyond the Alms House. I took the circuitous route by the Alms House, and was going

forward at the cottages next to the Ahns House, when I saw a large concourse of Orangemen coming forward within a few yards of the doctor's house. One man was on a horse, and he reared the horse, and they cheered and brandished bludgeons in a very riotous manner. I turned and went back. I thought it most prudent to go back.

1090. Do you know was anyone arrested for that?—I never heard.

1091. Do you know whether the people that take part in these great displays on the 12th July and the like are the same class of people that take part in the drumming parties?—The drumming party are one class, the Catholic party the other.

1092. I mean are these people that take part in the 12th July exhibitions the same class of people that keep up the drumming?—Decidedly so.

1093. I suppose you know the Dungannon magistrates here pretty well—I mean as well as any other man?—Yes, I do know them very well.

1094. Do you know their names—Mr. Lyle; Mr. Stanley—do you know him?—I do.

1095. Mr. Hamilton?—Yes.

1096. Do you see him here?—I see him.

1097. Mr. Burgess—I believe he don't often sit at petty sessions?—I don't know. I don't be at petty sessions.

1098. Mr. Nicholson?—Yes.

1099. Do you see him?—Yes, I see him coming down the square on petty sessions day.

1100. Mr. Courtenay Newton and Mr. Richardson—these gentlemen, I believe, are magistrates?—Yes.

1101. Do you think, as a sensible man, knowing the town and the district, and the ways of the people, that these drumming parties, being dangerous as they are, could be put down?—I think so.

1102. How could they be put down?—My opinion is, that if they applied the letter of the Lord Chancellor to the Donoughmore bench, in the case of the Donoughmore riots, it would be sufficient to put them down. If the Catholic party got up drumming parties, and they acted in the same way, that document coming down to the Donoughmore bench would be sufficient to put down Catholic drumming parties—that is my impression.

1103. If the Catholic party got up drumming parties the magistrates would find a way to put them down?—I think they would. I have stated that.

1104. With reference to the repression of these drumming parties, have you confidence in the Dungannon magistrates?—Not in a party case.

1105. I believe these gentlemen, and I put the question without intending any offence, are all of the Protestant religion?—I think so, or Presbyterians.

1106. Do you know of your own knowledge, and confining your answer to that, if any of those gentlemen whose names I have mentioned are Orangemen?—Well, I cannot give any answer as to that. I did see Mr. Rea on one occasion walk through Irish-street in an Orange procession.

1107. Did you see him walk in an Orange procession?—Walk dressed as an Orangeman.

1108. Mr. Commissioner COFFEY.—How long is that gentleman dead?—It is probably twenty-five years.

1109. Mr. *McLaughlin*.—You don't mean John Rea?—Oh, no. The gentleman I mean was a magistrate of this town, and was agent of the Ranfurly estate.

1110. Do you think the magistrates could do anything more than they have done, for that is the form in which this question has been put?—I have already stated my opinion that if Catholic drumming parties were got up I think the magistrates would put them down.

1111. Do you know what class of persons, I mean socially—whether farm servants, or labourers, or small farmers, or working men of the town, or servants of country gentlemen, or men attending on markets—take part in these drumming parties?—A portion of

the townspeople and a portion from different localities.

1112. Including nearly all the classes I have mentioned?—I would say a good many of them. I would not say all.

1113. Do you remember the day on which there was an excursion to Lisburn?—I think I do remember something about it.

1114. Do you remember the return of the Orangemen from Lisburn to Dungannon, anything in the nature of a disturbance taking place, and if so, what?—There was an apprehension of a row.

1115. Of course you will confine your answer to anything within your own knowledge, stating not what you heard, but what you saw?—What I saw was, on that morning when they were going away, I saw them leaving Union-place, at the top of Irish-street, and they played by my house as they were going to Lisburn.

1116. They played past your house?—They did, in the morning, about ten o'clock.

1117. When they were going past your house were they marching in procession?—Certainly.

1118. Not going in twos and threes?—No, they came out of an Orange Lodge in Union-place.

1119. This was in 1868?—Yes.

1120. They had drums and flags?—They had drums. I don't remember about the flags, but they were playing music.

1121. Then of course when they marched down to the railway station, what way would they go to the railway station?—They could go down Church-street, and turn down the short highway, or go down Scotch-street.

1122. Which way did they go?—I don't know, further than that they went past my house. I took no further notice of them.

1123. They marched across the top of Irish-street past your house?—Exactly.

1124. Do you remember in the evening anything occurring?—I remember when they came back there was a party assembled at the top of Irish-street, and they stopped a considerable time before they got into Union-place, I don't exactly know why, but a serious row was likely to occur.

1125. Were the people who were assembled at the top of Irish-street the Catholic party?—I think so. I did not leave my own door.

1126. Was there any stone throwing?—I could not see, because I did not go down.

1127. Was there some disturbance?—There was a great apprehension of disturbance on that occasion.

1128. Do you know anything at all that so much endangers the peace of Dungannon and its neighbourhood as the drumming parties?—I think only for the drumming parties no people would be more friendly with each other.

Cross-examined by Sergeant *Armstrong*.

1129. At what o'clock precisely did you barricade your windows?—Immediately after the men came on and passed down. They came on from opposite the church, and on to the top of Scotch-street and turned down. I went in and barricaded my windows at that time.

1130. I want to know the hour?—I would say probably about three o'clock.

1131. I wish that history should record the hour of the day?—About three o'clock as nearly as I can form an idea.

1132. Was it during business hours?—It was on business hours.

1133. You closed your shutters?—I closed my shutters. I closed my shop and barricaded my front windows.

1134. And drawingroom windows?—Exactly.

1135. And closed your shop to protect?—My watches and so on. Exactly. I thought it a very prudent course to adopt.

THIRD DAY.

August 18.

Mr. Hugh
Murphy.

THIRD DAY.

August 18.

Mr. Hugh
Murphy.

1136. What day was that?—I don't remember the day. It was on the 12th July.

1137. You don't know the year?—Well I think it was in 1865.

1138. Well now, did you look out of any other windows to see what was going on?—I did.

1139. Did you see what was going on?—I did not, because they were not opposite my house then.

1140. Then you looked out and saw nothing?—They were not in that direction then for me to see.

1141. When you looked out did you see anything to put you to terror?—Of course I was in terror. It is an evident fact that I was in terror when I went and barricaded my windows and closed the shutters.

1142. You were afraid that your windows would have been broken; but was a man of sense like you frightened?—I was frightened undoubtedly.

1143. Were you in a state of violent animosity against them?—Not a bit of it. I was prepared to defend my house if they attacked it, that's all.

1144. What would you do if you were attacked?—Why, if they attacked it, or broke into it I would take their life if I could—that's a fact.

1145. Mr. Commissioner COFFEY.—That is what I call violent animosity.

1146. *Witness.*—If they broke into my house they would not get away all. That's a fact, sir,

1147. Sergeant *Armstrong.*—I am happy to think that nobody molested your house?—No, they were not in that direction.

1148. Do you know who kept them from coming in that direction, or any other, to do harm?—Oh they did do harm.

1149. Did you see any done?—I did see it afterwards. After they left I saw several houses wrecked.

1150. Did you see Colonel Knox with the police in the street?—I think I saw Colonel Knox that day.

1151. Arn't you cock sure of it?—Yes.

1152. Why didn't you say that and give him a little credit; come, was not he there?—He was.

1153. With the police?—Yes, I think so.

1154. Think! Are not you sure?—I think I saw Colonel Knox, and I think it was he brought the men down Church-street, for he did not like them to go down Irish-street for fear there would be a collision; and I think they acted very prudently.

1155. Didn't you think his conduct was judicious?—I did.

1156. Did he do his best to prevent a row?—I think he did.

1157. How many police had he?—I don't know. I did not see any police with him at that time.

1158. Had he six or seven with him?—There were more police in the town.

1159. I am not talking of the town?—I don't know how many he had, or whether he had any or not at that time.

1160. You know he had only six or seven?—I don't know anything about it.

1161. And that the rest of the police were out with Mr. Coulson?—I think there were as many police in the town as would have prevented the Orangemen—

1162. How many men were there in the town?—I know plenty were drafted into it if they had not been sent away.

1163. Were they in it that day, or were they drafted into the country?—I was not out of my own house—I did not leave my own premises till after the row was over, so I could not tell anything about it.

1164. There was no harm done to your house that day?—Not a bit of it.

1165. You think these drumming parties very annoying?—I am sure of it.

1166. And you highly disapprove of Catholics getting up other drumming parties in opposition?—I would; but my disapproval would not prevent them.

1167. Didn't you sign the memorial?—I did not sign it.

1168. Were you asked to sign it?—I was not.

1169. Didn't you see them signing?—I did, but I

did not know what the object was, and I did not inquire it.

1170. You might have signed without knowing the object?—I did not ask the object, but walked on.

1171. Don't you know right well—in fact you know the time of day, don't you?—What time of day?

1172. Every time of day—you are a clockmaker?—If I look at a clock or watch I can tell the time of day.

1173. Don't you know that hundreds of people signed the memorial who did not know what it was about?—I don't know. I am not able to give any answer to that. I deny that they wanted me to sign it, and I deny also that I did sign it.

1174. Where were they signing it?—In chapel yard.

1175. On Sunday?—On Sunday.

1176. After the police investigation here?—Well, it was.

1177. The first Sunday after Captain Ball gave his evidence?—I don't know what Sunday it was, but it was on Sunday.

1178. Wasn't it Sunday, the 25th June?—It was on a Sunday at any rate.

1179. The day after Saturday?—It was on Sunday—

1180. The 25th of June?—Yes—I don't know when.

1181. You would not sign it?—I was not asked to sign it.

1182. Would you like to be a magistrate?—I would not.

1183. If you were a magistrate, what would you do to stop the drumming parties—give us your idea?—I think the Lord Chancellor's letter, and I stated that in my direct examination—that the document sent down by the Lord Chancellor to the magistrates of Dungannon would be sufficient for them to act on, and show them what constituted an illegal assembly.

1184. Mr. Commissioner COFFEY.—That is Lord Chancellor Brewster's letter?—Lord Chancellor Brewster's.

1185. I want to know from you, as a sensible, practical man, suppose you saw a lot of fellows drumming up the street suddenly, and that the police got a surprise, what would you do, supposing you were a magistrate?—I am not a magistrate.

1186. Supposing you were, what would you do?—You need not ask me. I should not know what I would do until I was put into that position.

1187. Do you think the magistrates ought to stay in the streets watching the drummers?—I do not. I think the constabulary ought to look after these things.

1188. And report to the magistrates?—Decidedly.

1189. Don't you think the drumming party would become like shadows and melt away before that?—Indeed they don't become like shadows at Dungannon. Shadows frequently disappear suddenly, but they don't disappear so quickly.

1190. Did you ever go out to look at them at night?—I didn't go out unless to my door.

1191. Is Dungannon improved, or has it gone back since forty years ago?—I think the people were as wealthy then as now. The shops are improved, and the streets are improved, and it is locally improved as far as that goes; but I think the population of Dungannon were as wealthy then as now.

1192. Are the houses better?—The houses are improved.

1193. And they live better?—They live better.

1194. And clothe themselves better?—Yes.

1195. And handsomer people?—I don't know that they are handsome. I don't know that.

1196. Is everything going on smooth except the drumming? Tell me what you would do if you were a policeman—you would not like to be a policeman?—I don't know a policeman's duty. I don't know anything about their duty, or about the magisterial duty; but I have told you about the Lord Chancellor's document—

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1197. No matter about it?—It is a great matter; I consider it a great matter.

1198. Now I want to know what you would do, and that is the only question I will ask you?—I don't know what I would do till I am put in the position of a policeman or a magistrate.

1199. Suppose you were, what would you do?—I can't tell till I am.

1200. You can tell?—I cannot tell until I should be put in that position, and then I would act as I thought best.

1201. Mr. *McLaughlin*.—You have mentioned now that the Hon. Colonel Knox prevented these people from doing things that they would otherwise have done?—I think so for the sake of the borough.

1202. Colonel Knox is member?—He is.

1203. And a gentleman deservedly of great influence?—Without a doubt.

1204. And plucky enough to do things that show pluck?—He is. I always admired him for his pluck. He is a straightforward gentleman, who takes his side and stands by it like a man.

1205. What side has he taken—the Orange side?—Yes.

1206. Do you think the use of that influence on the part of Colonel Knox would tend to put down those drumming parties if he was thoroughly in earnest?—I think he could do it.

1207. You have been asked by the Sergeant about this memorial—would you have had any hesitation whatever in signing it if you had known about it?—I would not.

1208. You have been asked if it was after Captain Ball's charges. Do you know if any memorial had been in course of preparation prior to this, or a previous occasion, with reference to drumming parties?—I remember after the wreck of 1865 I attended a meeting in the Total Abstinence Hall, for the purpose of laying the state of affairs in Dungannon before the Executive.

1209. With reference to what?—with reference to the wrecking, and to request the Government to send a stipendiary magistrate.

1210. So that that was not the first memorial?—No.

1211. Sergeant *Armstrong*.—That was in 1865?—Yes.

1212. Mr. Commissioner *COFFEY*.—You referred two or three times to the letter of the Chancellor?—Yes.

1213. Is that the letter of Lord Chancellor Brewster?—Yes.

1214. Is that the letter which contains the exposition of the law as laid down by English judges. The law of the land is that any party assembled under circumstances such as, according to the opinion of rational and firm men, is likely to produce danger to the tranquillity and peace of the neighbourhood is an unlawful assembly?—That is the letter, sir.

1215. Mr. *McLaughlin*.—What page do you read from?

1216. Mr. Commissioner *EXHAM*.—The very last. (To witness).—Mr. Murphy, you know of that letter being written, do you?—I think I have the paper.

1217. Was it published in the public newspapers?—In the public newspapers.

1218. Circulating in Dungannon?—Circulating in Dungannon.

1219. You observe that that letter is with reference to the inquiry held before Messrs. Kelly and Shaw?—It was in reference to the Donoughmore riot.

1220. Do you observe that that is a letter regarding what the magistrates should do in cases brought before them on evidence, disclosing a particular state of facts?—Decidedly.

1221. What I want to know is, what suggestion you give as to what the magistrates should do before the case is brought before them at all. You know it is one thing for the magistrates to act on evidence brought before them when the parties are summoned; but that does not take place until after the drumming

party has been over. But what would you suggest that the magistrates should do, or have left undone, before these drumming parties go on at all?—I think the police ought to take the names of the drumming parties and summon them.

1222. Summon them before the magistrates?—Yes.

1223. And that the magistrates should act on that letter?—Decidedly.

Mr. Commissioner *EXHAM*.—Quite right.

1224. Mr. Commissioner *COFFEY*.—I concur in that too; but allow me to ask you, don't you think it would be a useful precaution, if it reached the ears of the magistrates, that a drumming party took place last night, or last night week, that they should call the attention of the police to those drumming parties, as producing great irritation and annoyance to a portion of the inhabitants of the town, and that it would be well that they were vigilant, so as to put the law in action? Don't you think that would be a proper and right thing for the magistrates charged with the peace of the district to do?—I would think so.

1225. For the observance of law and order and tranquillity through the country?—I think so.

1226. Mr. Commissioner *EXHAM*.—You said that on that occasion in 1868, I think, they marched past your house playing in the morning?—About ten o'clock.

1227. Did they come from what is called an Orange lodge-room?—In Union-place there was an Orange-lodge there, I believe.

1228. Did they bring the drums out of that?—They did. That evening they returned; but I think they did not continue to leave them in it any longer; whoever owned the house after that; they were removed from that locality at the time.

1229. Tell us, as a matter of fact yourself, if they had any other place in Dungannon then in which their drums were kept?—Well, I don't know, sir. I never made any inquiry about it.

1230. Now, you must yourself know very well the inhabitants of Dungannon and the immediate neighbourhood?—I don't know them.

1231. Is it your impression that the humbler classes, particularly of the Roman Catholic creed here, would think that justice would be more fairly administered if there were some Roman Catholic magistrates on the bench?—I think that; I think they would.

1232. I mean now, in connexion with these party questions being brought before the bench?—I don't be connected with them.

1233. I know; but as I understand from what you know of the Roman Catholic population here, in all ordinary cases they would have perfect confidence in the magistrates?—In all ordinary cases, but not in party cases—oh, decidedly.

1234. Mr. Commissioner *COFFEY*.—What I understand you to say is, that as far as you know the feeling of the inhabitants of Dungannon, there is no complaint or apprehension that they won't get impartial justice from the magistracy in all cases except where party cases are involved?—Decidedly so; in all cases except where party is involved, I would as soon be before them as before a Catholic.

1235. Mr. Commissioner *EXHAM*.—Are there any Roman Catholics in Dungannon or its immediate neighbourhood who, in your opinion, ought to have the commission of the peace, and who, it would be desirable, should have it?—Well, I don't know exactly that I could point out any person.

1236. Mr. Commissioner *COFFEY*.—It is a delicate question to ask, but we must put it. Are there Roman Catholics in the town of Dungannon occupying the position of wholesale merchants, or are there Roman Catholic gentry round Dungannon of means and position?—Well, I am not aware exactly.

Sergeant *Armstrong*.—I asked that question yesterday.

Mr. Commissioner *EXHAM*.—I know you did, Sergeant, and it is a matter that has been occurring to Mr. Coffey and myself.

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Mr. Commissioner COFFEY. — If there are not materials it is an unfortunate circumstance, but nobody is to blame for that.

Mr. *M'Laughlin*. — As a general proposition, there is no doubt about the absence of materials.

1237. Mr. Commissioner EXHAM (to witness). — Can

you say that the presence in town, permanently resident here, of a Roman Catholic resident magistrate has in any way abated the complaint that you think the Roman Catholic people make in these party cases? — Well, I think in some degree.

The witness withdrew.

Mr. David
Laughlin.

Mr. *David Laughlin* sworn ; examined by Mr. *M'Laughlin*.

1238. Do you reside in Dungannon? — I do.

1239. You are in business here? — Yes.

1240. And resident in Church-street? — Yes.

1241. How long have you been in business here? — Sixteen or seventeen years.

1242. You are a Catholic, I believe? — Yes.

1243. I suppose you know that these drumming parties are prevalent? — Yes, indeed, sometimes they do give us a little turn.

1244. I suppose that's a delicate way of saying they are pretty general?

Sergeant *Armstrong*. — You are not dealing with an unwilling witness.

1245. Mr. *M'Laughlin* (to witness). — I withdraw it. Previous to the last five or six years were drumming parties as common as lately? — Not in the end where I live.

1246. You mean the end of the town? — Yes.

1247. Mr. Commissioner COFFEY. — What part of the town? — The foot of Church-street.

1248. Is that where Church-street joins Perry-street? — Yes.

1249. Mr. *M'Laughlin*. — Now until the last five or six years, were they rather round the town or coming into it? — Well, I am not able to give an opinion about that.

1250. I need hardly ask you if these exhibitions create annoyance and feelings that are very unpleasant in the minds of the Catholics? — Well, they do.

1251. And in your own mind as a Catholic? — No doubt.

1252. And you agree in the opinion that they tend to endanger the public peace? — They do.

1253. And in the interests of the public peace ought to be repressed by the authorities? — Well, I think so.

1254. There has been some talk here about counter demonstrations. Are you able to say whether it has at any time been the practice of the Catholics to arm themselves to defend their houses and property from attack? — I don't understand you perfectly.

1255. Have you known precautions to be taken by Catholics in regard to the defence of their houses? — I have ; but that had nothing to do with opposite demonstrations being got up.

1256. No, of course not ; on what occasion then were these precautions taken, might I ask? — Well, coming on to July.

1257. Now, using the words of the extract read by Mr. Commissioner Coffey, do you believe these exhibitions to be such as inspire reasonable men with alarm and disquietude, and all that? — Well, they are a great annoyance to the people.

1258. Did they ever pass your house, or next it, when beating drums? — Only once or twice I should say ; maybe twice or three times. On one time they came out of Union-lane, down the street in the morning, going somewhere on the 12th of July, when they passed up the street.

1259. Sergeant *Armstrong*. — The last 12th? — In 1865.

1260. Mr. *M'Laughlin*. — Coming up Perry-street they would turn off from your house by Park-road? — Yes.

1261. Had they beat up towards your house fronting Perry-street? — They had beat up to the corner and turned down.

1262. Perry-street is not inhabited exclusively by

any particular denomination? — Well, I think not ; a mixture.

1263. Then there is no doubt that this drumming party had been in the town? — They had.

1264. I suppose there is more risk to the public peace by reason of their being in the town than if they had been only in the neighbourhood, or only heard at a distance? — Well, yes ; the opposite party would meet them. For instance, I myself was the means, two or three times, with the assistance of others, of keeping them back — of cautioning them, because there was likely to be a row.

1265. Mr. Commissioner COFFEY. — When was that? — I don't remember. I think it likely that it was in February last.

1266. Just tell us what occurred on that particular day? — What occurred with the parties?

1267. Describe what you saw, what occurred there, and what you did? — The drumming party came up the street.

1268. What street? — Up Perry-street ; and a lot of fellows — some of them I knew, and some I did not — said " We will bear this no longer," or something to that effect ; and I said, " Now, be good boys, and stay away, you will only get into a row."

1269. Sergeant *Armstrong*. — When was this? — I think it was in February last.

1270. Mr. Commissioner COFFEY. — Go on? — The result was that we got them to keep back. I think Mr. Hayden assisted me at one time to keep the peace.

1271. About what number of persons were in that drumming party? — Really I could not say. There may have been from one to two hundred.

1272. Mr. Commissioner EXHAM. — At what time was that? — I think about nine o'clock in the evening.

1273. Were they townspeople? — I don't know the parties who were drumming, for I was at my own door.

1274. Mr. *M'Laughlin*. — Was that the night they were in Perry-street? — Yes.

1275. That they beat the drums past Captain Ball's house? — Well, I rather think it was the same night.

1276. Did you ever hear of anyone having been arrested for that? — I did not hear.

1277. Or prosecuted? — I did not hear.

1278. I believe you on more than one occasion exerted any influence you had to prevent the opposite party, the Catholic party, from opposing them? — Yes, at any time that I saw any gathering. They would generally stop about my door, knowing that the others would come up almost to it, and turn down, and I would advise them to go home.

1279. Do you think that gentlemen like Colonel Knox, Mr. Newton, Mr. Nicholson, and Mr. Hamilton, occupying the position they do in the neighbourhood, would have any influence corresponding to the influence which you have with the Catholics in prevailing on the drumming parties not to imitate the others? — It was always my notion that they had that influence.

1280. Was it your notion that they have exercised that influence as they ought, in earnest? — Well, really I don't know about that. I saw Colonel Knox on this 12th July that they passed up, himself coming down past Stevenson-place, and trying to keep the Orangemen back.

1281. Did you ever see him trying to prevent the drumming parties? — I never did.

Mr. Commissioner COFFEY.—Drumming parties occur at night, or in the evening; and unless the magistrates were there on the spot, and at the time, they could not use any influence that they might possess.

Mr. *M'Laughlin*.—I asked the question for another object. You will find it in the letter signed by the magistrates expressing concurrence in the mode of action when two magistrates were there one night.

Mr. Commissioner EXHAM.—Colonel Knox and Mr. Newton.

Mr. *M'Laughlin*.—It is referred to in the memorial also.

1282. (To witness).—You know the localities. Do you think that if the magistrates were there in earnest and exerted their power they could put an end to those drumming parties?—That is in private? If they would advise those parties of it—if they used their influence with their friends not to encourage them, saying, “We don’t like it;” I rather think the parties would not like to be seen in it.

1283. Do you know the class of people that generally take part in those drumming parties?—I do not know them exactly.

1284. Now, do you think that the risk of opposite demonstrations on the part of Catholics is increasing of late years or decreasing?—Well, that’s a thing I can’t give an answer to, as I am pretty close to my business.

1285. Quite right. Do you agree with Mr. Murphy in what he says as to the confidence that the people—Catholic and Protestant—have in the magistrates otherwise than in party cases?—I do.

1286. Mr. Commissioner COFFEY.—What is your opinion about that, according to the best opportunities you have? Is it that except in party cases they have entire confidence in the integrity and impartiality of the bench?—I think so.

1287. And then with respect to party cases, and those religious questions that produce that feeling, you think that they have not the confidence of the Roman Catholic body?—The Roman Catholics seem to think that magistrates, who are either Orangemen or sympathisers with them—that is, supposing they are Orangemen—cannot take an oath to keep up with the Orange party, and, at the same time, do justice on the bench.

1288. In party cases?—In party cases; that is what I heard—parties talking about things like this.

1289. Mr. *M'Laughlin*.—Do you remember the 19th of February, 1869—do you remember the night that Mr. Dowse’s effigy was burned?—I do.

1290. I believe—in passing—Mr. Dowse was a native of Dungannon?—I don’t know. I heard he was.

1291. Did you see the effigy yourself burned?—I was not out of my place that evening.

1292. Did you hear the commotion?—I did hear it.

1293. Was there much firing of guns?—I don’t know that I heard firing, but I heard cheering and things of that description as I was going to bed.

1294. Then, in point of fact, you were not out that night at all?—Well, I rather think I was not.

1295. Does Windmill-hill occupy a prominent position with respect to the town—can anyone see the one from the other?—It does.

Cross-examined by Sergeant *Armstrong*.

1296. You were not out at all that night that the effigy was burned?—Well, I think I was not.

1297. Had they drums there also—did you hear any drumming?—I think I did.

1298. Do you recollect whether you did or not?—I am not certain, but I think I heard drumming and cheering.

1299. Did you ever see any effigy burned?—I never saw anyone of any kind.

1300. Do you live near where Captain Ball was living on the night in February that the drumming took place?—No; there is a good distance between the two places.

1301. How far?—There might be 150 yards or so. THIRD DAY.

1302. So much?—There might be more. August 13.

1303. Did you happen to look out at them to tell if they stopped opposite to Captain Ball’s place?—Well, I think they did. Mr. David Laughlin.

1304. Did you observe it?—I observed a little stop as it were, for I was standing at the door. They might have made a little stop.

1305. Had they been playing up to that?—I tell you what I observed. They gave what we call a wee extra rattle; that is what I observed.

1306. Did they beat up past your house?—No.

1307. Were they playing all the time they were in your sight?—They were.

1308. And they gave a little additional rattle there—a wee rattle?—Yes.

1309. Did they stop a little?—Where do you mean now?

1310. Opposite the Captain’s?—Well, I think they did.

1311. You were not near enough to see what they stopped for?—I was not.

1312. At that time, in July, 1865, that you talked of, did you see Colonel Knox out in the street?—I did.

1313. Did you see him getting a blow from one of those men that he could persuade, with a branch of a tree across his head—these are the men that would take his advice and stop walking?—No; but I imagined the first time I saw him afterwards was without his head.

1314. Did you see him without his hat?—No, sir. When he went to stop those parties there was a man with a scythe, and he gave it some kind of a quiver, and in fact I shut my eyes.

1315. Did you see Colonel Knox in the act of endeavouring to stop and remonstrate with those people?—He was striving to stop them.

1316. Did you see that with a good wipe of a stick across his head they knocked off his hat?—No.

1317. What did you mean by saying that he lost his head?—By the way the fellow made with his scythe I imagined that he struck him.

1318. You thought the head would have been cut off him?—I did indeed.

1319. Do you think that that fellow could be persuaded to stop drumming if he thought it would vex the Romans?—Well, I think then, in the passion they were in, they could not.

1320. Do you know a great many of the lower classes of Orangemen?—Well, I do not.

1321. Don’t you think they are a very unruly set?—Well, indeed I suppose they are. I would rather think they are.

1322. Do you suppose there is a gentleman in the county who could persuade them to behave themselves, by the mere force of private persuasion?—I think they could have got influence over them.

1323. But to get them to stop drumming—that is a delicate point. They take their advice in a great many things; but do you think the magistrates could coax them out of that?—Just in the heat of the moment I think they could not, in such a case as this.

1324. What would you propose to do—call meetings and have sermons delivered, and speeches made to them?—I don’t know.

1325. If you were a magistrate yourself, what would you do with this common class of Orangemen—for the lower they are, the more obstinate, I suppose, they would be; what would you do?—I don’t know.

1326. Have you ever met yourself, in the common run of life, fellows doing wrong, and tried to persuade them against doing it; have you ever offered advice to such men?—I might.

1327. About their conduct?—I might.

1328. Have they always taken it?—They have not.

1329. Mr. *M'Laughlin*.—Do you know a magistrate named Mr. Charles Stanley?—I do.

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1330. Do you think Mr. Stanley would have any influence over them?—Oh, I think he would.

1331. Were you present at the police investigation?—No.

1332. Mr. Commissioner EXHAM.—You have said that there is a feeling that the magistrate, who is either an Orangeman himself or a sympathiser with the Orange party, cannot, in a party case, give an impartial decision?—I did not say that.

1333. I understood you to say—not that it is your feeling—but that there was an impression to that effect?—There was that impression.

1334. Did you ever hear—ever hear any particular instance alleged in which, in a case brought before the magistrates, they have not given what was considered to be an impartial decision?—Well, I did not.

(Examination of witness closed.)

Mr. Jas. Kelly.

Mr. James Kelly sworn; examined by Mr. M^cLaughlin.

1335. Mr. Kelly, I believe you reside in Dungannon?—Yes.

1336. What business do you carry on?—I am a clothier.

1337. I believe you are a Catholic?—Yes.

1338. Do you know of these drumming parties being prevalent in Dungannon and its neighbourhood?—I do.

1339. How long have you been resident in Dungannon?—I think over thirty-five years.

1340. Now, latterly have those drumming parties been more prevalent than they were previously?—They have increased considerably.

1341. They have latterly increased considerably?—Yes.

1342. Within what period have they increased considerably?—Well, I think they increased considerably after the death of the late Earl of Ranfurly, but considerably more during the last few years.

1343. Talking of the last few years do you remember the 12th of July, 1865?—Yes.

1344. The time of the wrecking?—Yes; I do.

1345. Whereabouts in the town do you live?—I live nearly up at the back of Irish-street, at the top of Irish-street, nearly approaching the corner, at the left hand side.

1346. That is not far from Union-place?—No, it is quite convenient.

1347. And not far, I need hardly say, from Market-square?—Yes, it is round the corner.

1348. Did you see them marching that morning from Union-place?—In 1865 you mean.

1349. Yes?—That is a mistake I think.

1350. You did not see them. I am talking of the time the houses were wrecked?—Oh, the wrecking—is that what you allude to?

1351. Yes?—I remember that quite well.

1352. Was not that in 1865?—Yes.

1353. So I thought?—Yes, I remember that. You allude to the morning. I did not see anything in the morning.

1354. In the middle of day did you see any people marching?—Yes; I remember when I heard the noise.

1355. What noise?—The noise of the drumming party, and the alarm created, the people shouting out that the Orangemen were coming into the town. I went up to Blakeney's corner to see for myself.

1356. Where is Blakeney's corner?—Blakeney's corner is opposite to where Murphy lives—Murphy's door is opposite to where Blakeney lived at that time.

1357. In point of fact, Blakeney's was the corner of the Market-square opposite Macken's corner?—Yes—opposite Macken's corner, at Scotch-street—at the corner of Irish-street, and Market-square also.

1358. In point of fact that is the corner you would pass in coming down Market-square, turning to your left?—No; if I was going up to my own do—that is not the way.

1359. Suppose you were coming down Market-square and turned into Union-place, you would turn Blakeney's corner?—Yes, quite right.

1360. You would have it on your right?—Yes.

1361. What did you see when you came up there?

—When I got the length of the corner I saw an immense number of people coming up opposite the church, and they got the length of the head of Scotch-street, and of course I got a little alarmed and went straight back to my own door, into my own house.

1362. What made you get alarmed?—The appearance of such a large number of people being armed with all imaginable weapons apparently.

1363. You are now talking of the middle of the day?—Well, yes, this was the middle of the day.

1364. In the afternoon, at all events?—Yes.

1365. These are the people that had the scythes, and pitchforks, and drums?—Yes, these were the people.

1366. Were they playing fifes and beating drums?—That I don't recollect.

1367. Do you remember whether any houses in Irish-street were wrecked on that occasion?—Oh, indeed I do.

1368. Was yours wrecked?—No, it was not, but I remember others that were wrecked—I said, Mackel-hone's and Hayden's.

1369. Did you know any of the persons you saw in that assembly—could you identify any of them?—The only parties—the only thing I saw of that assembly was that they got as they went on some opposition, whether by the constabulary or the inhabitants I don't know which. I saw a man carrying up a large drum on the opposite side of the street from my own place.

1370. Do you know a man called Standish?—Yes, I do.

1371. What is the man called Standish—in whose employment is he?—I think he is servant to Mr. Evans.

1372. Servant to Mr. Evans?—Yes.

1373. That is a new name—who is Mr. Evans?—He is of a very respectable family in this neighbourhood; he was a magistrate here at one time.

1374. He is not living here now?—He is; but he is not in the commission of the peace—he retired from it.

1375. Mr. Commissioner COFFEY.—Was he a magistrate in 1865?—That I don't know indeed.

1376. Mr. M^cLaughlin.—Do you know whether the apprehension of your co-religionists with respect to these drumming parties has been on the increase since the time of that wrecking in 1865?—Oh, of course, I have no doubt about it.

1377. By reason of what happened then?—Yes.

1378. Did you see any of the constabulary in the street at the time of that wrecking in 1865?—Yes, I saw a number of policemen; I could not say how many. I think they were in front of the drumming party, or the Orange party, coming into town, I should say.

1379. Do you remember the day of the great Orange meeting in Lisburn, I think the 1st of July, 1868; do you remember the time they went to Lisburn?—I remember the time they went to Lisburn well.

1380. Coming back to what I said before. You know Union-place; did you see them leaving that morning?—I did not see them. I don't recollect seeing them leaving in the morning. I have no recollection more than I am aware that they did leave.

1381. It is not of much consequence, and we will

just keep to what you know yourself?—That is simply what I know.

1382. Did you see them when they were returning that night?—Oh, yes.

1383. At what time of night did you first see or hear them?—A friend and I were taking a walk down by the Moy-road.

1384. Who was he?—Mr. Flanagan. We were taking a walk down in that direction, I think, when we heard a drumming party coming along Northland-row, or at least at the foot of Perry-street; and I believe they drummed up Perry-street, Church-street, through the Market-square to Union-place, near my residence.

1385. There is no doubt that these places are inside the town—Perry-street, Church-street, Market-square, and all that?—No doubt about that.

1386. That these places are in the town of Dungannon?—Oh, no question about it.

1387. Do you know whether on that occasion there was any disturbance by reason of that drumming party?—Well, I will tell you in my own way. When the drumming party were returning from this demonstration, I believe at Lisburn, they drummed from the place I mentioned (Northland-row) to the head of Irish-street, where, it is said, they had an Orange lodge; and at the corner of the street I got alarmed, very much alarmed, seeing Captain Smith and a number of policemen; there might be a dozen, more or less, stationed on each side, one portion of them placed at Mrs. Irwin's, on the opposite side of the street; and as far as my recollection of it goes I believe I heard glass broken—stones were thrown.

1388. When you say "Captain" Smith, you mean Inspector Smith?—This gentleman here (pointing to Sub-Inspector Smith).

1389. We are not dealing with any charge against Sub-Inspector Smith. Do you know a gentleman named Nicholson, who is in the commission of the peace?—I know him by seeing him in town.

1390. That is a very natural way of knowing him. Did you observe him at the time Sub-Inspector Smith was there?—I did not observe him there at the time.

1391. Or soon afterwards?—In fact I have only a faint recollection, I was so much excited when I saw the two parties opposite to each other.

1392. Mr. Commissioner COFFEY.—Do you mean the police or the drumming party?—The police, the drumming party, and the Catholics—they had collected in a considerable crowd at the head of the street; there were three parties.

1393. Mr. *McLaughlin*.—Do you remember what time of the night you saw Mr. Nicholson there?—Well, I cannot say whether I saw him at all or not. I cannot say of my own knowing whether I saw Mr. Nicholson on the scene at all or not—but I was told afterwards—

Sergeant *Armstrong*.—Don't mind that.

1394. Mr. *McLaughlin*.—We will have that afterwards (to witness).—You heard of the windows being broken?—I heard the smashing of glass.

1395. I believe it is due to Sub-Inspector Smith to say he thanked you on that occasion for your exertions to keep the peace?—Yes, after I made an appeal to the people—this was after ten o'clock at night. I made a warm appeal to the people in my own way—both parties knowing me well, to go peaceably and quietly to their homes, and they would have no reason to regret it in the morning.

1396. And with respect to that Sub-Inspector Smith acknowledged your services?—Yes, he complimented me.

1397. Mr. Commissioner COFFEY.—When you say you heard glass breaking and saw stones thrown—from whom did the stones proceed—from which party?—Well, I believe from where I heard the glass break that the stones came from the Catholic party.

1398. Mr. Commissioner COFFEY.—Were they behind the police?—No, they were in front of the police.

1399. Mr. Commissioner COFFEY.—Then the police were actually between the two parties?

1400. The witness (illustrating).—There is Union-

place, there is either side of Irish-street, there is Mrs. Irwin's corner. The police were stationed along there.

Mr. Commissioner COFFEY.—Between the two parties in that way.

1401. Mr. *McLaughlin* (to witness).—Assuming the hearing of the police to be in as good order as yours, had they an opportunity of hearing the glass breaking?—I would say so.

1402. Did you not hear the glass breaking?—I did.

1403. I think you said you are of opinion from the direction the stones came that it was the Catholic party who threw them. Do you know whether any of them were arrested on that occasion by the police?—I am not aware.

1404. Did ever you hear of any of either party being arrested?—No, not to my knowledge.

1405. Did ever you hear of anyone being summoned by the police of either party with respect to that transaction?—Not to my knowledge.

1406. Now, Mr. Kelly, as a peace-loving man, using your exertions when opportunity offers to preserve the peace, do you think that these drumming parties tend to endanger the peace?—Very much.

1407. Are they felt to be an insult by you and your co-religionists?—No doubt of it.

1408. I believe that feeling is not confined to the humbler members of your creed—it prevails all classes of the Catholic population?—Yes, I am very closely connected with, I may say, all the respectable Catholics of Dungannon, and from my knowledge I believe that the Catholics—the respectable Catholics, feel it more than what the other class do—more universally.

1409. I suppose you know pretty well the magistrates in this locality—you know Mr. Lyle?—I know him by seeing him.

1410. And Mr. Charles Stanley?—I know him by seeing him.

1411. And Mr. Hamilton and Mr. Burgess?—Yes.

1412. Mr. Nicholson you have already mentioned. Do you know Mr. Richardson?—Yes, I know him.

1413. He is not long a magistrate?—Not long, a very short time.

1414. You were able on the occasion you mentioned, I was glad to hear it, by using your influence to prevent the Catholic party doing more than throwing stones, were you not?—I believe there would have been a very serious riot only I happened fortunately to be on the scene.

1415. Is not Mr. Newton a man of great influence in this neighbourhood?—No question of it.

Sergeant *Armstrong*.—This is too wide: the expression of the opinion of individuals as to the influence that might be exercised by magistrates. I submit it to the good sense of the Commissioners that it is entirely too wide, too remote.

Mr. Commissioner COFFEY.—It is perfectly obvious that unless these gentlemen were unknown they must have a certain amount of influence. As to this particular transaction it don't appear that any of the magistrates were there at all.

Sergeant *Armstrong*.—No.

Mr. Commissioner COFFEY.—And I have not the slightest doubt, if they had been there, they would have had influence, more or less, and that the people would respect their position, more or less. There can be no question about it.

Sergeant *Armstrong*.—It is perfectly wild to suggest that any magistrate could influence all the Orangemen of the county.

Mr. Commissioner COFFEY.—Certainly. It would be perfectly wild. But reasonable men are always under the influence of those in whom they have confidence, and all Orangemen, I suppose, are not devoid of reason.

Sergeant *Armstrong*.—Not of a whole pack of Orangemen.

Mr. *McLaughlin*.—Allow me to remind the Commissioners that when one of these Orangemen was asked at the police inquiry was he an Orangeman he refused to answer the question—Mr. Stanley.

Sergeant *Armstrong*.—Well.

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Mr. *McLaughlin*.—He did not think it judicious to answer. I don't think, with great respect, there is anything wild in the evidence I seek to get in. If there is, let the Sergeant show it. If a gentleman in the comparatively humble position of the witness had influence, and could use it, would not a portion of such gentlemen as there are in the gallery have influence; and surely it is of importance for me to obtain from the witness information here as to the position of these gentlemen with respect to the community? That is the reason I ask it.

Mr. Commissioner COFFEY.—If this evidence is adduced for the purpose of influencing our opinion, speaking for myself, I have not the slightest hesitation in saying what is the impression on my own mind, and it is this, that without a particle of this evidence at all the same impression would exist, that of course persons of influence in the locality can by the exercise of that influence persuade a certain per-centage of the population. I quite go with Sergeant Armstrong that there are certain obstinate people—some turbulent people, some intolerant people, that no amount of persuasion or argument could influence in their conduct. But at the same time I am clearly of opinion, and I have not the slightest objection to express it openly, that I hope and expect we shall have evidence to show that the magistrates, if they are of opinion that these matters, about which we have had so much evidence, are pernicious and calculated to produce mischief, irritation, breaches of the peace, have privately and publicly, in season and out of season, discountenanced and denounced them, as I think magistrates who have charge of the peace of a district where their functions are to be exercised, have a right to do. It is the duty not only of the magistrates but of every person in the community who can exercise influence to use that influence to put a stop to that which, so far as the evidence goes, appears to be admitted on all hands, including Sergeant Armstrong, frankly and fully to be an unquestionable nuisance and danger.

Sergeant Armstrong.—To be sure. My case is that the magistrates have always done their best. Every one of them will tell you so.

Mr. Commissioner EXHAM.—I think it is the interest of every country gentleman, whether magistrate or not, to have peace in his county, and to try and preserve it.

Sergeant Armstrong.—You may find party spirit to be quite ungovernable.

Mr. Commissioner COFFEY.—But we expect that influence in the right direction will be endeavoured to be exercised.

Sergeant Armstrong.—Certainly, and so it has been.

Mr. Commissioner COFFEY.—I am not prejudging you, I need not say. My mind is perfectly open.

Sergeant Armstrong.—I am sure of that.

Mr. *McLaughlin*.—I am altogether in the hands of the Commissioners.

Mr. Commissioner COFFEY.—We don't preclude you from going into re-examination at all.

Mr. *McLaughlin*.—My position is very different from that of Sergeant Armstrong. I am here "opening the ball," if I may use that expression, the evidence of the magistrates not yet being before me. I cannot recall my witnesses to make clear any point that arises subsequently, therefore I must make an independent case, notwithstanding that I hope to make my case stronger when the magistrates are examined. I cannot help taking this line, though I shall not delay the Court one moment longer than is necessary.

Mr. Commissioner COFFEY.—I don't think you have done so.

Sergeant Armstrong.—If the magistrates come forward and say "we used our best efforts not only privately but publicly," and give the occasions and names, and if this witness then says, "you did nothing of the sort," that would be perfectly legitimate evidence, but it is not the true thing at all to ask about the influence of magistrates without seeing whether there is material on which that influence could be exercised.

Mr. Commissioner COFFEY.—But it is a cogent argument, notwithstanding, if a person like the witness was able on that occasion to arrest by his influence a serious breach of the peace and prevent it occurring—it certainly is a matter for consideration that the same influence, if exercised in an opposite direction, does not produce the same result.

Sergeant Armstrong.—There is a great distinction. It is not *ad idem* at all. No doubt, if a magistrate walking up the street sees two men about to box, immediately his influence is used to put an end to the collision and he may prevent it. But that is a very different thing from preventing persons in the habit of beating drums from doing so; they may not listen to expostulation against the impropriety of it. That is not at all like the witness in the box preventing people fighting. There is no magistrate but would do that. The cases are not at all *ad idem*.

Mr. Commissioner COFFEY.—They have already proved there was no magistrate there at all.

Sergeant Armstrong.—But there was.

Mr. Commissioner COFFEY.—I have his evidence.

Sergeant Armstrong.—All he says is he did not see any. But Mr. Nicholson was there in command of the constabulary.

Mr. *McLaughlin*.—That makes the evidence all the more applicable.

Sergeant Armstrong.—How is it more applicable?

Mr. *McLaughlin*.—My friend says it is manifestly unfair to ask if a man could exercise influence which *non constat* he possessed at all. That is true. But it is my business to show that from the position of the parties, owing to their social eminence, and all that, they have influence in the opinion of reasonable men. Then it is for them to show, as Mr. Commissioner Coffey fairly pointed out at the proper time, that they did all that lay in their power to have that influence felt in the right way. That is just the entire of it.

Sergeant Armstrong.—I don't object to any fact; but to be asking about influence that might be exercised on others is, I respectfully submit, entering into too remote and too wild an inquiry, and only getting into speculations instead of facts.

Mr. Commissioner COFFEY.—The whole thing tumbles down like a house of cards if you show that these gentlemen exercised their influence to put an end to this state of things.

Sergeant Armstrong.—But there is the question, whether this is not too remote. I dare say this gentleman does not think the magistrates of Dungannon would do anything wrong.

1416. Mr. *McLaughlin*.—I will put that question to him.

Witness.—I know there are two or three magistrates in Dungannon who are the dearest and purest minded men in Ireland, and from what I know of them I would trust my life in the balance in their hands.

1417. Sergeant Armstrong.—Even in a party matter?

Witness.—Oh no.

1418. Mr. *McLaughlin*.—I believe in party matters you would not have that confidence in them that you would have in other matters; you would be afraid of them?—Well, I have very seldom attended petty sessions and therefore I am not able to give an opinion. I could give the feelings of the Catholics, but I could not go beyond that. I have very seldom attended this court-house for I had other business to do. Therefore I could not give an opinion regarding the decision of the magistrates in party squabbles and fights, but I can give the feeling of the Catholics.

1419. What is the feeling of the Catholics?—The feeling of the Catholic people in general is that in party cases the magistrates don't act up to the mark.

1420. Don't act up to the mark? That is a very expressive phrase. I suppose you mean by that they could put down these drumming parties if they made up their mind earnestly?—I have a strong opinion on that.

1421. What is that opinion?

Sergeant *Armstrong*.—There is no use in this. I object to such evidence.

Mr. *McLaughlin*.—If you object, I won't go into it. I am done with the witness.

James Kelly, cross-examined by Sergeant *Armstrong*.

1422. Do you recollect whether you saw Mr. Nicholson, the magistrate, when the squabble was going on at the top of the street?—I don't recollect seeing him, but it is probable enough he was there.

1423. Assisting the police—in charge of the police?—That I could not say, for I did not see him.

1424. But you heard he was there?—I did.

1425. And there is no doubt of it?—No doubt of it.

1426. Was any blow struck?—No blow that I am aware of.

1427. And was it on that occasion the stones were thrown?—Yes.

1428. And you are not aware whether any people were punished for it?—I am not aware.

1429. Do you know the town very well?—Yes, I do quite well.

1430. I presume you are a gentleman in business in the town?—Yes.

1431. And you have a large number of customers of different classes and different feelings?—Yes.

1432. And you know the neighbourhood tolerably well?—Tolerably well.

1433. Do you think you know the town as well and the general population as well as an ordinary policeman?—Well, I think I do.

1434. Naturally. You are 35 years here—give me the name of any Catholic who threw a stone that night, or do you know any?—I could not give you names at such a length of time. It is a considerable time ago to think of finding out any single individual.

1435. Mr. Commissioner *Coffey*.—Did you know any of them?—Not answered.

1436. Sergeant *Armstrong*.—Did you know any of them so as to be able to identify them?—If I thought of it at the time I am sure I would.

1437. Can you now say that you could then identify any of them, and know who they were?—I could not say I knew them at the time, but I could have laid my hand on them.

1438. I mean to know them?—Not that I know.

1439. Did you see any Orangemen?—Yes.

1440. You did?—Yes.

1441. Give me the names of any of them who were there then?—Well, they were my neighbours, reared up some at my feet.

1442. Can you tell me any of them, who they were?—Well, I could tell you them if the Commissioners insist on it.

1443. If you don't like, I don't want to breed enmity between you and your neighbours; the Statute of Limitation bars it. Tell me, did you report those Orangemen you knew to the police?—Indeed I did not.

1444. Did you suggest to either the police or the magistrates that they ought to be punished at the time?—Well, I remember on one occasion—

1445. Is it about this time?—I cannot lay my hand on the particular time.

1446. I will bring you to the other times afterwards, but to keep things straight—do you recollect whether on this particular occasion, when you knew some of them, did you report them to the police or the magistrates?—Indeed I did not; that was not my business.

1447. You would not like to tell?—Indeed I would not.

1448. You looked on and said nothing about it. Tell me, did you report any of the Catholics to the police?—Indeed I did not.

1449. Nor to the magistrates?—No.

1450. Did you call on any of the magistrates, and suggest that you could give information?—I did not indeed.

1451. Do you think it the part of a loyal man, interested in the peace of the town, to bring offenders

to justice?—I do believe it, but I believe that we look up to the magistrates, at least I do individually look up to the magistrates as being the guardians of the peace, and they have a right to protect it.

1452. Quite true; but if other people won't give them information, what are they to do—you did not know any of the Catholic party there that night to identify them?—I could at the time I am sure.

1453. Did you not say awhile ago you could not now say you could then identify any?—I said nothing of the kind.

1454. Do you now say that you are certain you could then know and have then told who some of the Catholic stone-throwers were?—Quite certain.

1455. You are quite certain you could?—No doubt of it.

1456. Let me ask you why you did not do it, and help the police?—I have assisted the police on several occasions.

1457. I am not blaming you at all, but supposing it happened that the police did not know these fellows, why did you not tell them?—I don't think it was my province.

1458. That is fair enough—that is your view. You attend court, you said, very little?—Very seldom.

1459. How long is it since Mr. Evans ceased to act as magistrate?—Well, it is a few years ago.

1460. Was it before that time?—Well, I could not say indeed.

1461. Was it Standish had the drum?—Yes.

1462. You knew him at all events, and you never reported him to the police?—No indeed.

1463. Nor to the magistrates?—No, it was none of my business.

1464. I am not saying it was. Were you ever in court at all?—Yes, I have been.

1465. With some business of your own?—No, I never had any business in court.

1466. There is no harm in it. I am not suggesting anything; anyone may have a summons at times?—I never had a summons in my life.

1467. On this 1st of July, 1868, you and Flanagan were walking in Northland-row?—Yes.

1468. Did you not expect the Orangemen?—How?

1469. Did not you and Flanagan go out to have the pleasure of seeing them coming in?—I don't think that was the inducement.

1470. Or a partial inducement?—I don't think it had anything to do with it at all; I don't, really.

1471. You look as if it had?—I don't think I do.

1472. You knew they went out to Lisburn?—I did quite well.

1473. Did you not think they were great fools for doing so?—I did.

1474. Did you not think you would see the fools coming home in the evening, to see how they looked?—Really I could not say. I don't believe that that was the inducement. I could not say indeed.

1475. Perhaps you acted like many other men from mixed motives?—No, I don't recollect it; if I did I would state it.

1476. Could you recollect whether the lads in that crowd appeared in orange scarves?—I cannot lay my hand upon it.

1477. Had they a flag flying when they were coming back?—I think so. As far as my remembrance goes of the thing I think they must. I was merely out that day. I never made it a point to attend or go near them for some years.

1478. Had they on this particular occasion a flag with them?—Well, I don't think on coming in they had.

1479. Not that you recollect?—Not that I recollect.

1480. Were they beating drums coming home?—Yes; they were beating drums up the street.

1481. You recollect that?—No doubt of it.

1482. Are you quite certain they were beating the drums?—I am quite certain.

1483. Do you remember remarking to Flanagan that they were playing?—I don't.

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1484. And saying, "I just expected I would hear that?"—Indeed I did not.

1485. Did Flanagan remark anything?—No; I did not anticipate any row.

1486. I am very sure you did not?—I did not anticipate a row at the time.

1487. You would not go to meet them if you thought there would be any row?—Indeed I would.

1488. If there were fifty of them in the Market-square, you would go to meet them?—I would not be afraid to go meet them.

1489. You never were afraid of them?—I would not, as an individual—I would not be afraid of them; but if you saw them on the day of the wrecking—the great wrecking—they marched, I don't know how many of them, up the street, and five or ten minutes after they came in the wrecking commenced.

1490. Tell me, are you respected and well-liked in the town?—Yes; I stand very well with my fellow-townsmen, as far as my knowledge goes.

1491. That great wrecking you spoke of—were you present when the valuable mirrors were broken in Hughes's hotel, now occupied by Mr. Moon?—No, I was not; that is not what I refer to, it is the wrecking of 1852.

1492. What was the wrecking you allude to?—The transaction of 1852.

1493. Fifty-two?—Yes.

1494. Mr. Commissioner COFFEY.—You mean nearly twenty years ago?—Yes.

Mr. *M'Laughlin*.—Let me say my questions were not pointed to that at all.

Mr. Commissioner COFFEY.—I know that, but he has distinguished this one.

Mr. *M'Laughlin*.—He has a series of them to speak of.

1495. Sergeant *Armstrong* (to witness).—In 1852, you spoke of a great wrecking—did you see any great wrecking since then?—Yes; the 1865 wrecking.

1496. Was there not in 1841 a great wrecking?—Yes; and there was another one after that in 1852, at Higgins's election.

1497. Was there not one in 1841?—Yes.

1498. I suppose you recollect the one in 1803?—I was not at home at that time.

1499. You were not at home in 1803?—I was, in 1841, and at other times.

Mr. Commissioner COFFEY.—We understand perfectly; there were several at intervals.

1500. Sergeant *Armstrong* (to witness).—When you were walking in Northumberland-row, was it in 1803—when you went out to meet the Orangemen?—When I walked out in 1803? I don't understand the question.

1501. What is the earliest wrecking you recollect—do you recollect fifty years ago?—I recollect Orange processions nearly fifty years ago.

1502. Are they more frequent now than they were then, or less frequent?—More frequent, to be sure.

1503. They are more frequent now?—Yes.

1504. How often used they march at that time?—Generally about the 12th—forty-seven years ago.

1505. You were not in the town then?—I was not here at the time, but I remember them where I then resided.

1506. It appears you never were afraid of them under any circumstances?—Well, I was not afraid.

1507. Had you animosity to them when they were beating the drums?—I have no animosity in the world to any human being living.

1508. Mr. *M'Laughlin*.—Including the learned Sergeant?

Witness.—Including the learned Sergeant.

1509. Sergeant *Armstrong*.—It would be quite wonderful if he had any animosity to me?

Witness.—I am very much delighted in having the pleasure of seeing you.

1510. Sergeant *Armstrong*.—You don't hate the Orangemen?—I honour and respect many of them, and would do them a kindly good turn.

1511. All you want is to have the drumming stopped?—Well, I like some of them (Orangemen) well; there are some of the Protestants so much my friends that, if possible, I could lay my hand on their hearts.

1512. But do you like them so well as to like them to drum in your ears?—Indeed I don't.

1513. Would you not wish drumming put an end to?—I would; I would have no drumming of any kind if it gave offence.

1514. And do you think it does give offence?—No doubt of it.

1515. Would you not like to put an end to it?—I would.

1516. You would not like either party to be playing tunes or obstructing each other?—Indeed I would not.

1517. If you were a magistrate, what would you do to put an end to drumming parties?—Well, I believe one magistrate—

1518. What would you do yourself?—If I was a magistrate—if I had got the social position that would entitle me to be elevated to the bench, I believe, with this gentleman here on my left (Sub-Inspector Smith) and five policemen, I could keep the town quiet.

1519. What would you do, that is what I want to know, suppose you had Sub-Inspector Smith, and yourself, and five policemen up at the church—you know where it is?—I do, quite well.

1520. Suppose you occupied the town of Dungannon there, and suppose the Orangemen came down Windmill-hill, what would you do, would you charge them?—I would prevent that being done.

1521. How?—I would take Brewster's letter into my hand, and I would act on it.

1522. But, when you met the band, what would you do?—I want to answer your question.

1523. I want you to tell me how you would go about it?—I would take Brewster's letter into my hand; if there never was another document published, it would be sufficient ground for me if I was sitting on the bench as a magistrate, with the assistance of Sub-Inspector Smith and a few policemen to keep the district quiet.

1524. Suppose you went with Brewster's letter in your hand, and Sub-Inspector Smith and five policemen, what would you do with the letter—would you stuff it down the men's throats?—I will tell you, if you allow me.

1525. Do?—When these drumming parties meet in small knots drumming about the town and in the town, I would insist on Sub-Inspector Smith, with the assistance of his policemen, bringing their cases strong enough, in such a way as would justify the magistrate in putting them down as a public and common nuisance.

1526. Where would Brewster's letter be all this time?—I would have it in my hand to guide me.

1527. Is it in the street? What would you do in the street?—I would do nothing in the street, only take the names of the people who gave offence to their neighbours.

1528. Suppose you did not know them?—How could there be policemen here over seven, or eight, or ten years without knowing the neighbourhood and district?

1529. Tell me the name of any man of a drumming party you saw in the town—you are thirty-five years in it?—I could.

1530. Tell me?—I could; a hundred—do you take me for an informer?

1531. Indeed I do not. If you had five policemen, and no objection to take the commission of the peace, you would assume the charge and responsibility of the whole town?—If I had the social position to take the commission, I would carry out what I say.

1532. And keep the town all quiet?—I would not be the least afraid of it.

1533. Do you think every man in the town would take your advice?—I believe there are more people in Dungannon would take my advice than the advice of

any other resident in Dungannon with the exception of Mr. Newton.

1534. You are No. 2, he is No. 1. You would establish a Peace Preservation Society in Dungannon under the name of Newton, Kelly and company?—Not answered.

1535. Mr. *M'Laughlin* (to witness).—You are not a magistrate yet?—I don't know what may happen.

1536. Do you know that this happened—that you have been cross-examined?—Yes.

1537. Do you know that the magistrates will all be cross-examined too?—I don't know indeed.

1538. Mr. Commissioner EXHAM (to witness).—Did it ever occur to you when Captain Ball came here to speak to him on the subject?—Well, it did not. The position I hold in society makes me have great diffidence in bringing myself before men of his class. I would rather go round a mile of road than meet with any gentleman here. I am not in the habit of mixing with people of that class, and I would rather not meet them.

1539. But when you say that, did you not know that Captain Ball from his position was a gentleman you could implicitly trust in—and that he was likely, coming here as a gentleman appointed by the Government, and resident in the town, if any matter was

brought under his notice, to have what was proper done?—Well, I will answer that—there were other Catholics that had better and more opportunities, and their position in society enabled them more to communicate on the subject with Captain Ball than an humble individual like myself.

1540. Mr. *M'Laughlin*.—I think there is a little misconception on the minds of the Commissioners in this way. This gentleman in the box has not spoken of any proceeding so lately as the arrival of Captain Ball here.

Mr. Commissioner EXHAM.—I understood him on the contrary to say that the drumming parties had rather increased lately.

Mr. *M'Laughlin*.—But all the matters he deposed to were prior to the arrival of Captain Ball.

Mr. Commissioner EXHAM.—But he spoke of the drumming parties as increasing.

Witness.—I wanted to say that there are other Catholics in the town who by their position—

Mr. Commissioner CORREY.—Are better entitled to speak.

Witness.—They are more out in public. I am seldom out from my own business. I am not much out in public.

The witness then retired.

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Mr. James Macken sworn; examined by Mr. *M'Laughlin*.

Mr. James Macken.

1541. Mr. Macken, you reside I believe in Dungannon?—I do.

1542. You have a large wholesale establishment at the corner of the Market-square?—No, retail.

1543. Well, retail. You have been living in Dungannon for some time?—I have.

1544. Were you born here?—No, not in Dungannon.

1545. But in the neighbourhood?—Yes, about a mile from Dungannon.

1546. How long have you been living in the town?—Seventeen years.

1547. And I believe you are largely in business?—Pretty largely.

1548. You live at the right hand corner of Market-square, as you go into Scotch-street?—Yes.

1549. You are a Catholic?—I am.

1550. I suppose you know Dungannon and its people pretty well?—I do, very well.

1551. With regard to the drumming parties, I believe about their existence there is no doubt?—No.

1552. How are they regarded by you and people like you? Do they give offence?—Certainly.

1553. The people that take part in them—are there any Catholics amongst them?—Never any Catholics in them.

1554. Are they regarded as party displays?—Certainly.

1555. I suppose you agree with the county inspector and the other witnesses, official and non-official, that they have a manifest tendency to endanger the public peace?—I do.

1556. Is it your opinion, Mr. Macken, that latterly that tendency has been increased?—Well I think it has.

1557. Mention the reason of the increase as far as you know?—Well, I could not exactly do so.

1558. Do I understand you as saying that the displays have become more prevalent of late?—Yes; I think they are.

1559. You think they are. You have heard them from time to time?—I have indeed.

1560. Did ever you know in the seventeen years you have been here any vigorous, sincere, manly effort to put them down?—I never did, of my own knowledge.

1561. I believe the magistrates are highly respectable men, occupying elevated positions in society?—They are.

1562. And some of them, for instance Mr. Newton, are men of great experience, and intimately acquainted with the people of Dungannon and the whole county?—Mr. Newton has immense influence.

1563. Am I correct in saying that Mr. Newton, in addition to his other elements of influence happens to be agent of the Earl of Ranfurly?—Yes.

1564. He has an extensive property in this neighbourhood?—Yes.

1565. Mr. Mackenzie Lyle lives not far from this?—At Donoughmore House, about two miles from this.

1566. Where does Mr. Stanley live?—At Roughan Park.

1567. How far from this?—Four miles.

1568. Where does Mr. Hamilton live?—At Grange Park, about three miles from this.

1569. All in a ring fence—where does Mr. Newton live?—About two miles away.

1570. Now, the district in which these gentlemen reside, is that the district paraded by the drumming parties principally?—Yes.

1571. It is only lately I believe, at least it is more lately than previously to have drumming through the town as distinguished from drumming in the vicinity?—Well, I think it is more frequently through the streets than it had been previously.

1572. I suppose you would be inclined to think that a drumming party coming up Perry-street and Church-street, and across that direction, would be a drumming party going through the streets where Catholics reside, more or less?—Yes, there is a mixed community in Perry-street.

1573. Am I right in saying from my instructions that in Perry-street the population are fairly enough about half and half?—Nearly so, I should say.

1574. One would think from the name of Church-street that the preponderance there is in favour of the Protestants?—Yes, the majority, I would say, are Protestants.

1575. Now do you think, Mr. Macken, that these drumming parties could be put down by a proper exercise of the power of the authorities?—That was always my opinion.

1576. Now, you don't look to be an enthusiastic

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man; you have a good position here, and as a sensible man—not a partisan or an enthusiast—is that your deliberate opinion?—It is, and always has been.

1577. I believe on some occasions these drumming parties have resulted in outrages on houses and wreckings, as we take the liberty of calling them, and all that?—Yes, on one occasion, at all events.

1578. Sergeant *Armstrong*.—Give us the date of that?

Witness.—1865.

1579. Mr. *M'Laughlin*.—I may say that in any case I do not mean to go beyond the first item in the bill of particulars in point of time. (To witness).—I believe your brother-in-law is the occupier of the Ranfurly Arms Hotel, Mr. Hughes?—Yes.

1580. What is his Christian name?—James.

1581. Prior to his connexion with that establishment he was proprietor of Moon's hotel?—He was in 1865.

1582. Mr. Hughes is a Catholic also?—He is.

1583. Do you remember the time that Mr. Hughes's house, the present Moon's hotel, was wrecked?—I do.

1584. Was that in the year 1865?—It was.

1585. Was it in the month of July do you know?—It was on the 12th of July.

1586. Did you see it afterwards?—I did on that evening, or immediately afterwards.

1587. Did you observe shots on the side of it?—I did; they were shown to me.

1588. And I suppose the windows were smashed?—Yes, the windows were nearly all smashed.

1589. Now, using ordinary language, would you say that that house was wrecked?—I would say so certainly. It got no other name at the time.

1590. I suppose if your own house was dealt with in the same way it would not be of much use to you afterwards?—It would be a bad wreck, I am afraid.

1591. From time to time have houses been wrecked here, and houses broken into, and all that?—Well, not very frequently since that. There have been at times a few.

1592. I suppose you don't in any respect differ in opinion from those who think that in matters apart from party displays, there is no more intelligent, or more efficient bench of magistrates than the Dungannon magistrates?—Well, I always thought so. They are a very intelligent bench, I think.

1593. There is no objection to suggesting that perhaps more excellent magistrates are not to be had in the whole county of Tyrone?—Well, I don't know the other magistrates.

1594. But I suppose in those cases that involve this unfortunate party feeling, that is the curse of this country, you would not place that confidence in them that you would in ordinary cases?—Not in party cases.

1595. Mr. Commissioner *COFFEY*.—Are you speaking of your own conviction or of the general impression amongst the Roman Catholic population?—I am speaking what I hear from the Catholic population, and my own conviction as well.

1596. And your own conviction as well?—Yes.

1597. Mr. *M'Laughlin*.—Of course that is your honest opinion without being offensive to anyone?—I don't mean offence to anyone.

1598. It is not unlike the opinion that would be entertained by a respectable Protestant shopkeeper if Catholic displays were going on, and there was an exclusively Catholic bench. Were you present in court when there was some talk as to modifying the constitution of the bench by appointing Catholic magistrates?—Yes, I heard it mentioned to-day.

1599. You may have heard me admit that there is not material to make Catholic magistrates in the North of Ireland. If you deprive the people of land and education for a couple centuries, they are not fit in a moment to become magistrates. Now I ask you, suppose it was possible to have some Catholic magistrates, is it your belief that one or two magistrates on the bench would be utterly swamped by the entire strength

of the company on the other side, say nine or ten overruling them?

Sergeant *Armstrong*.—I object to this. We will be all swamped if such questions as that are put.

Mr. Commissioner *COFFEY*.—According to the meaning of the question we would have no bench of magistrates at all.

Mr. *M'Laughlin*.—Not at all.

Mr. Commissioner *COFFEY*.—That would be the result.

Mr. *M'Laughlin*.—It is a view of the case that never would have entered into my mind but for the questions I heard put at the beginning of the inquiry by one of the Commissioners.

Mr. Commissioner *EXHAM*.—Certainly.

Mr. *M'Laughlin*.—I don't think the question is at all as unnatural as my friend the Sergeant assumes it to be.

Mr. Commissioner *EXHAM*.—But it is not a matter that we can go into at all, a matter of polling the bench. A suggestion occurred to the mind of both Mr. Coffey and myself, and we talked over the matter to see what was the position of the town with respect to its inhabitants and those of the immediate neighbourhood, and you know perfectly well you yourself were one of the very parties in another place to suggest it.

Mr. *M'Laughlin*.—I am not responsible for making it.

Sergeant *Armstrong*.—I was responsible for it in Belfast.

Mr. Commissioner *EXHAM*.—Our object is to deal out justice to all parties here, and we might consider whether our report should not contain a suggestion—if we had the materials for doing it, in reference to increasing the bench of magistrates of the district, but to speculate that there may be five Protestants to four Catholics, or anything of that kind, I cannot conceive such a thing.

Mr. *M'Laughlin*.—I only asked him with respect to a state of things which should necessarily exist. I don't see any harm in that.

Mr. Commissioner *EXHAM*.—You said "swamped."

Mr. *M'Laughlin*.—Yes, "swamped" is what I said.

Mr. Commissioner *COFFEY*.—I should like to state this for myself publicly—that on what is before me, irrespective altogether of other portions of the inquiry, I would think it my duty, and a legitimate matter to report upon—to suggest to the Executive Government if such a thing was practicable, or would be attainable in the interests of justice to have two or three Roman Catholics, as the case may be, or any other number they think proper, put on the bench here, and that is the reason we have asked are these materials existing, from which these persons could be drawn. If there are not materials existing, of course there is an end to the question; but to point out that there ought to be an equal balance of the bench, which would involve the getting of a couple of Presbyterians for that communion, a couple of Independents for theirs—such a thing is against all the principles of the British Constitution, which does not regard in such a matter any element of religious distinction. But, on the other hand, it is of great consequence to the administration of justice, and the prevalence of peace in a community, that the population generally should have entire confidence in the bench of magistrates.

Mr. Commissioner *EXHAM*.—Certainly.

Mr. Commissioner *COFFEY*.—I presume Mr. *M'Laughlin* does not want to push it beyond that.

Mr. *M'Laughlin*.—Certainly not; but I want this opportunity of explaining. I did not want to push the matter one jot beyond the limit you would confine it, for this reason, that I never intended to suggest there should be any Catholics put on the bench. That was not at all my object. My object was in strict accordance with the declaration I made at an early part of this inquiry when the subject was first introduced—not by me—a declaration which I now repeat, that I believe there are not materials.

1600. To *witness*.—Is it your opinion that there are not materials?—As a general rule. There may be one individual exception in the town and the neighbourhood. There may, perhaps, be one or two Catholics.

1601. Mr. Commissioner COFFEY.—You think there is a difficulty in point of property and education in taking persons (for magistrates) from the Roman Catholic class in this town and neighbourhood?—Well, there may be one or two in the town and neighbourhood.

Mr. *M'Laughlin*.—There is one matter which really disposes of that part of the subject, and would lead me to avoid it altogether—that is, the utter possibility of doing it, having regard to the obvious and unmistakable condition of the country. You cannot do it.

Mr. Commissioner EXHAM.—I am only saying now what is a matter of public record, that in the case of the Derry inquiry, where there was a somewhat similar difficulty, a suggestion was made by my friend Mr. Murphy and myself in a report to His Excellency, to the effect that, as there was a feeling towards the magistrates, though they only became aware in the course of the inquiry, of the existence of that feeling, which seemed to be without any reasonable cause, at least no specific case was mentioned—party cases ought to be left to the resident magistrates altogether to decide. But I see the difficulty there is here.

Mr. *M'Laughlin*.—I am very much obliged to you for the suggestion.

1602. To *Witness*.—Do you think it would tend to create confidence that don't now exist, or to restore confidence if it ever did exist, if party cases here, so distinguished from ordinary cases, were dealt with solely by two stipendiary magistrates without reference to the local magistrates?—I think it would have the effect of giving more confidence to the Catholic population.

1603. Do you think anybody here, Catholic or Protestant, would care one pinch of snuff whether these two professional resident magistrates were Catholic or Protestant, Presbyterian or Methodist?—I don't think they would, at least I would not.

1604. And do you think that the administration of the law with respect to party cases by two resident magistrates, such as I have mentioned, would be attended by wholesome results in the way of restoring confidence?—I believe it would.

James Macken, cross-examined by Sergeant *Armstrong*.

1605. Have you been in the habit of attending petty sessions?—I have not.

1606. Your business don't lie in that way?—It don't lie in that way.

1607. But have you ever attended?—I have occasionally, not often.

1608. What were the occasions on which you did attend?—I cannot just point to them now.

1609. Were they matters in which you were personally interested?—Well, no.

1610. I don't want to go into any private detail?—No; I don't remember anything I am not peculiarly interested in.

1611. Do you remember the occasions you did attend—what were the proceedings you did attend?—Well, I cannot just mention at present any particular thing. I take very little interest in petty sessions.

1612. Did you ever take any particular interest at all in these party investigations?—I don't think I ever attended them.

1613. Did you ever come down to court when a party case was under investigation?—I don't remember that I did.

1614. Can you give me any instance in which to your own knowledge any magistrate on the bench here exhibited partiality in a party case—of your own knowledge?—Not of my own knowledge, I could not at present.

1615. You think a couple of Catholic gentlemen at all events in the town and neighbourhood might be

appointed to the commission of the peace?—Well, I think I could point out one or two.

1616. Don't you think that the Catholic population would be rather better pleased at their appointment than to have two strange new resident magistrates Protestants?—I don't know that they would.

1617. Do you think they would have as much confidence in them?—They would have as much confidence.

1618. You think the whole matter might be allayed by the presence of a resident magistrate?—I can only give that as my opinion. I believe that a resident magistrate would give more confidence than any two Catholics in the neighbourhood that could be appointed.

1619. And I suppose you propose that the resident magistrate should be really resident, and pay marked attention to this district?—I would expect so.

1620. What would you say to putting the expense, say £1,200 a year, on the ratepayers of the petty sessions district of Dungannon?—I would have a great objection to paying £1,200 a year.

Mr. *M'Laughlin*.—You know that no resident magistrate is ever paid that or half of it.

Sergeant *Armstrong*.—But he might have to be paid more for extra special attention to a district.

1621. (To *witness*).—Were you in Hughes' hotel the night of the affair of '65?—I was in the place after it occurred.

1622. You saw what had occurred?—I did.

1623. You saw the glasses, the mirrors broken?—I did.

1624. Over the chimney-piece?—I was all through the place.

1625. I want to know where the mirrors were—whether at the end of the room or over the chimney-piece?—I believe over the chimney-piece.

1626. Were they looking-glasses?—I don't know. There was a large glass over the chimney-piece in the commercial room, and it was broken, at least I believe so.

1627. Did he get from the county the expense?—He tried, but did not get it.

1628. What became of the application?—I don't know; he did not get the money at all events.

Re-examined by Mr. *M'Laughlin*.

1629. You were asked whether or not you attended any of the magisterial investigations consequent on these party rows. Now were you present on any occasion when an attack upon the chapel windows, resulting in the smashing of some glass, was the subject of investigation—you know Mr. Stanley?—I do. I think I was present on that occasion.

1630. Were you present on the day Mr. Stanley—

Sergeant *Armstrong* (to *witness*).—Unless you were say nothing. When I hear a gentleman say "I think," I always doubt. If you recollect, I have not a word to say.

Witness.—I believe I was present.

1631. Mr. *M'Laughlin*.—Do you recollect Mr. Stanley saying anything about its being a trivial affair?—I do remember it. There were remarks passed upon it by a number of people in court.

1632. Do you remember exactly what Mr. Stanley did say—the substance of it?—Well, I remember him saying it was a slight offence, or a trivial offence, breaking the chapel windows. I don't remember more than the substance of it.

1633. He said it was a slight offence or a trivial offence to break the chapel windows?—Something like that.

Mr. Commissioner COFFEY.—Not "to break," but "breaking." It is susceptible of two meanings.

1634. Mr. *M'Laughlin* (to *witness*).—Were you here in court when it was stated by the sergeant, reading from the correspondence, that a couple of the magistrates protested against that on the moment?—I was.

1635. I suppose you were not on the bench?—I was somewhere among the people.

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1636. And I suppose your attention was more attracted to the observations you heard about here at the time than what occurred on the bench?—I know the matter attracted the dissatisfaction of the people.

1637. Do you remember Mr. Newton, after Mr. Stanley made the remark, saying anything?—Well, I don't recollect who the gentleman was.

1638. You were present at that, at all events?—I was.

Sergeant *Armstrong*.—I think it very inconvenient that his memory should be refreshed on this matter.

Witness.—I don't think that that matter resulted in a party case.

1639. Sergeant *Armstrong*.—I don't mean for a moment to suggest that you are misstating the impression the matter left on your mind, but just let me ask you, do you recollect that there was a very full investigation before the magistrates on that occasion into the circumstances connected with that annoyance at the chapel?—I remember there was a long discussion about it by the magistrates.

1640. Do you recollect that after that it was adjourned and no decision come to at the time?—I think so. I believe that was so.

1641. Do you recollect that after the adjournment had been announced by the chairman of the bench, somebody proposed that there should be a private investigation for the purpose of scrutinizing the thing more deeply, or words to that effect?—Yes; I think so.

1642. Do you recollect Mr. Stanley thereupon saying, "I think it is rather a trivial matter to make so much about it, and ought to be investigated in public, as it has been, if at all?"—I do.

1643. And that he would not be a party to investigating such a trivial matter in a private way, and it should be done in public?—Yes.

1644. And is not that the way it occurred?—Yes, it is.

1645. I want to ask you one matter about the 12th of July, 1865. Do you know that at the time your brother-in-law's house was assailed and broken, that informations were taken at petty sessions against twenty of the Protestant party and eight of the Catholic party for that riot?—I don't know the number.

1646. But you know a great number were sent for trial?—I do. I believe so.

1647. And sent to the assizes to give greater dignity to the proceedings?—I believe so.

1648. And you know they were afterwards all tried?—Yes. I think so.

1649. Do you know that four days afterwards, on the 24th of July, six of the Roman Catholic party were brought before the magistrates at petty sessions, Mr. Brooke being chairman?—Yes. I believe so.

1650. And do you know he discharged them on their own recognizances although the Protestants had been sent for trial?—I was not present, but as well as I remember that was the fact.

1651. Mr. Commissioner COFFEY.—Are you aware of what became of the matter before the assizes?—

Sergeant *Armstrong*.—I directed the information to be furnished. I don't know what became of it.

Mr. *M'Laughlin*.—I will complete the history of it.

Mr. Commissioner EXHAM.—There was an order, I believe, to return all the cases to the assizes. Something occurred about that very case.

1652. Sergeant *Armstrong* (to witness).—Did you sign this memorial?—I did not. I was not at home, but I believe my son did.

1653. Did you authorize him?—I was not at home. I believe my son signed it.

1654. He did that without your authority?—He did, but if I had been at home I would have signed it.

1655. What age is your son?—He is eleven years old.

1656. A boy eleven years old, in your absence, and without your authority, put your name to it?—Not answered.

1657. Mr. *M'Laughlin* (to witness).—Did you adopt

his act?—I did. If I was at home I would have signed it.

1658. Mr. Commissioner COFFEY.—You say you recollect Mr. Stanley, when he was sitting here, saying that the matter was too trivial, the breaking of the chapel windows, to engage in a private investigation about it?—I do.

1659. Did he dissent from a public investigation into the transaction?—Oh, I think not.

1660. Then his objection was, "I won't go into a private inquiry here in reference to a matter that ought to be investigated in public?"—So far as my recollection goes that is the fact.

If the case is that way, so far as I am concerned, I think he did perfectly right.

Sergeant *Armstrong*.—It rests in that way. That was what the gentleman stated in the report to the Lord Lieutenant, and what he will swear hereafter.

Mr. *M'Laughlin*.—I think it is a very inconvenient practice to give an opinion on a case before it is fully heard.

Mr. Commissioner COFFEY.—I think it is very convenient. It gives you the opportunity of producing and covering the point with evidence, if you can, to remove any impression formed. It is in order to prevent you being in the dark.

Mr. *M'Laughlin*.—You might trust me in that respect.

Mr. Commissioner EXHAM.—I unhesitatingly say that if Mr. Stanley, or any other magistrate in the land, said it was a trivial offence to break the chapel windows, or the windows of any other place of worship, it would be a most ——. I can hardly venture on the language that ought to be applied to it.

Sergeant *Armstrong*.—You must take the language with the context.

Mr. Commissioner EXHAM.—If he said that it was a trivial matter breaking the chapel windows—or to break the chapel windows, or if he announced it to be his opinion from the bench that it was a trivial offence to break the windows of a chapel, or of any place of worship, I differ from him, and say it would be a most scandalous thing and serious offence.

Mr. *M'Laughlin*.—I take leave, with the most profound and unaffected respect, and with an entire absence of ambiguity, to say it would be very convenient to know if the opinion expressed by the learned Commissioner (Coffey) is to be dealt with as representing the present condition of the mind of the Commissioner.

Mr. Commissioner COFFEY.—Certainly, and is intended to be so.

Sergeant *Armstrong*.—I would suggest to my learned friend——

Mr. *M'Laughlin*.—Am I to be allowed to speak?

Mr. Commissioner COFFEY.—Certainly you are to be allowed to speak. I think you take your full share of the speaking.

Sergeant *Armstrong*.—The Commissioners merely say what is the present effect on their mind.

Mr. *M'Laughlin*.—What I am about to say is this, and I take leave to say it, notwithstanding the kind intervention of the Sergeant, that it is inconvenient and likely to place a little difficulty in the way of a modest counsel like myself to hear an expression of opinion amounting to a decision on the point before the entire evidence on that point is before the Court. I have not the slightest doubt in the world that Mr. Commissioner Coffey, as well as Mr. Commissioner Exham, will change his mind as readily as he formed it, and all the more readily from his judicial frame of mind, should it be right to do so; but still, after all, it would be just as well that his mind was not occupied by any pre-existing opinion on the point in controversy.

Mr. Commissioner COFFEY.—I think it right to say, for myself, that whenever the evidence makes an impression on my mind, I shall express my opinion of how the facts are in two views—first, that there may be no mistake about it, that it may be marked down as a

matter I have formed an opinion on at this stage of the proceedings, and next, that the attention of counsel who is conducting the investigation, and who entertains a different view, and is instructed to make a different representation, may be perfectly well aware of what is passing through my mind, and can direct his attention to it with the view of supplying evidence of a complete and satisfactory kind, if such be in his power, to maintain his own version of the transaction. The opinion I have already formed, I may say, is upon the evidence of your own witness.

Mr. *M'Laughlin*.—You, as it were, make a conditional order against me.

Mr. Commissioner COFFEY.—Precisely. It is a conditional order.

Mr. *M'Laughlin*.—That makes the embarrassment all the greater.

Mr. Commissioner COFFEY.—You are not in the least degree embarrassed.

1661. Mr. *M'Laughlin* (to witness).—Let me ask you this. If Mr. Stanley simply said that he would not have the matter privately investigated, it being a very trivial transaction, can you account for the want of common sense that pervaded the people who expressed indignation at it here, and can you account for the protest of the other magistrates on that very clear point?—I cannot do it at present.

Mr. *M'Laughlin*.—Neither can I.

Mr. Commissioner COFFEY.—I can perfectly. I am now again giving my opinion. The observation of Mr. Stanley may have been misunderstood by those who listened to it.

Sergeant *Armstrong*.—They did not rightly appreciate what was said.

Mr. Commissioner COFFEY.—It is a thing of constant occurrence in the experience of every man who has had experience at all, that what is said in a public court by judge and counsel, is often misunderstood.

Mr. *M'Laughlin*.—No doubt.

Mr. Commissioner COFFEY.—But don't understand me as wanting to screen Mr. Stanley or anybody else. If evidence is given of a nature that ought to make me change my mind, I will change it.

Mr. *M'Laughlin*.—Unless I believed you would, I would find a way to communicate my opinion upon the matter; but I believe you will change your opinion if the facts require you—that is fair.

Mr. Commissioner COFFEY.—I know that.

1662.—Mr. *M'Laughlin* (to witness).—I want to complete the history of the gentlemen sent on to Omagh for trial for the affair of the 12th July; I believe some people were taken up of both parties?—Yes.

1663. There was another outrage on the 7th of August—I am talking of '65—and on that day I believe some Catholics were arrested, at the end of Shamble-lane?—I don't remember that.

1664. Were you a juror at the following assizes at Omagh?—I was not.

1665. Do you happen to know it is usual in these cases—there being a handful of one party, and a handful of another—for the two parties to be thrown against each other—both to plead guilty at assizes, and come home that night—do you know that?—My mind is not very clear about that.

My mind is very clear as to what happened, for the very first brief I held on circuit was in this very case.

Sergeant *Armstrong*.—It is great encouragement to the magistrates to send forward such cases.

1666. Mr. Commissioner COFFEY (to Mr. *M'Laughlin*).—What party did you represent on the occasion?

Mr. *M'Laughlin*.—I pleaded guilty for the Catholics, and I would do so again under the circumstances.

The witness then retired.

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Mr. *Edward Hurson* sworn; examined by Mr. *M'Laughlin*.

Mr. *Edward Hurson*.

1667. You reside in Dungannon?—I do.

1668. What business are you?—I am a woollen draper, grocer, wine and spirit dealer.

1669. A general merchant?—Yes.

1670. You are a Catholic I believe?—Yes.

1671. And you have resided here I suppose for many years?—About thirty-five years.

1672. Just taking you up at the point where the last witness left off. Do you remember being a juror at the assizes that were held at Omagh following the 12th July, 1865, on the 7th of August in the same year?—I don't remember that particular case.

1673. But do you remember attending there as a juror?—I have attended every assize for the last eighteen years, except one.

1674. You don't remember this particular case?—I do.

1675. You remember the wrecking of the houses in that year, 1865?—I do.

1676. Were you present in court when the last witness, Mr. James Macken, was examined?—I was.

1677. And you heard his testimony with respect to the wrecking of Mr. Hughes's hotel?—Yes; I saw Mr. Hughes's and Mr. Hayden's.

1678. Did you see Hughes's, now Moon's hotel?—I did.

1679. In ordinary parlance was it wrecked?—That is the usual term applied to it.

1680. And do you apply the same term to the other (Hayden's)?—It is the very same word is to be applied to it.

1681. I suppose you know the magistrates here?—I do.

1682. I suppose you know these drumming parties—I mean you know of the existence of these drumming parties?—I know of the existence of drumming parties. It would take a great deal of trouble to know the individuals of them.

1683. Do you feel annoyed by the drumming parties?—Well, I must, and I do.

1684. You do?—Yes.

1685. I suppose you agree in the opinion already expressed that they are dangerous to the public peace, besides being offensive to a large portion of the community?—I think it would be much better if there was no displays of any kind.

1686. Of course you extend that observation to one party as well as the other?—I do.

1687. Do you happen to know whether the Catholics indulge in any drumming parties?—I never knew anything of the kind.

1688. You think the public peace is endangered by the prevalence of these drumming parties?—Well, I should think so.

1689. I believe the gentlemen who held the commissions of the peace here are deservedly men of high position and of great influence?—No question of it.

1690. I suppose if you had the power, acting truly and properly for the public interest you would put down drumming parties on one side or the other?—Well, I have given my opinion as far as I think I have authority to do so.

1691. Do you think if those in authority were resolutely determined to do it, they could put them down?—Well, I think they could in a great measure by their influence and station as magistrates.

1692. I suppose, without being a magistrate yourself, you are able to say that magistrates cannot deal with cases until they are brought before them?—So I understand.

1693. That is a matter of common sense which sometimes resembles law. Suppose you were a magistrate, would you think it your duty to try and make the police bring these drumming parties before you?

Sergeant *Armstrong*.—I object to what he would think his duty if he was a magistrate.

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Huron.

Mr. *M'Laughlin*.—Quite so. It is a very proper objection.

1694. (To witness).—Now, does there exist—mind I ask you as to your own knowledge—does there exist a feeling of insecurity amongst the Catholic population as to anticipated attacks on their houses arising out of these drumming parties and processions?—Well, I should think so since 1865, from the serious character of what took place on that occasion.

1695. Do you keep firearms for the protection of your own house?—I do.

1696. You have a family, I suppose?—I have.

1697. Where do you live?—In Scotch-street.

1698. That is not far from the place where Hughes's Hotel, now Moon's, was wrecked?—It is at the head of the street near Market-square.

1699. Do you consider it necessary to keep firearms in your house?—Well, the impression was made in my mind from the display in 1865 that it might be requisite at some future period.

1700. From your knowledge of the feeling of the people, can you tell me whether there exists the same feeling of confidence in the administration of the law by the magistrates in party cases that exists with

respect to the administration of the law by the same magistrates in cases not party cases?—Well, I understand there is not. My own opinion is that I would not have just the same confidence in them in party cases. I would have unlimited confidence in them in everything else.

1701. You would have unlimited confidence in them in everything else?—Yes.

1702. Is the feeling you depose to as to party cases widespread amongst the people?—As far as I know it is.

1703. Do you conceive that the feeling of confidence in the administration of the law by the magistrates would be restored if the law was administered with respect to party displays by two resident magistrates as distinguished from the local magistrates?—Well, I would suppose they would give increased confidence.

1704. You suppose they would give increased confidence?—Yes.

That is all I ask you.

Sergeant *Armstrong*.—I will not trouble the witness with any questions.

The witness then withdrew.

Mr. John
Hagan.

Mr. *John Hagan* sworn; examined by Mr. *M'Laughlin*.

1705. Mr. Hagan, do you reside in Dungannon?—I do.

1706. Have you resided in it long?—About 45 or 46 years.

1707. What business do you carry on?—I keep a public-house and bakery.

1708. Do you happen to know that these drumming parties are prevalent?—I do; I hear them.

1709. Do you know do they excite bad feeling amongst the Catholics?—Not a doubt of it.

1710. Are you a Catholic yourself?—Yes.

1711. Do you agree with those who consider these displays endanger the public peace?—I think so, and from my own independent opinion of the general run of feeling amongst the Catholics.

1712. Do you remember the time of the wrecking?—Well, I may hear of it.

1713. But you don't know of your own knowledge?—Not of my own mind.

1714. Do you keep arms in your house?—I keep a gun.

1715. You keep a gun?—Yes, I do.

1716. What do you keep a gun for?—Why, for the protection of my own place.

1717. For the protection of your own place?—Yes. I never had to use it.

1718. You never had to use it?—No, not for the last forty years.

1719. When did you get it?—A good while ago.

1720. Do you know whether or not it would tend to increase the peace of the town if these drumming parties were put an end to?—Well, of course it would.

1721. Do you think they could be put an end to if the magistrates were in earnest?—Well, I consider that they could.

1722. You consider if the magistrates were in earnest they could be put an end to?—Yes.

1723. Do you take part in the effort to prevent other people making demonstrations, opposing demonstrations?—Well, I always advised against it.

1724. But is there still a feeling amongst the Catholics about these?—Well, I think there is.

1725. And I suppose you think that the public peace would be still more endangered if there were opposing displays?—Well, I think so. I think if they were all put down it would be better.

1726. You know the magistrates here?—I do.

1727. And I believe outside party cases you could get no better magistrates?—Some of them I have no dread of in any shape.

1728. Mr. Commissioner COFFEY.—Party or no party.

Witness.—No doubt of it.

1729. Mr. *M'Laughlin*.—Who are those?—I would take Mr. Newton. I would have every confidence in him, I did not care whether in a party matter or not, that he would do what was right if he was not overturned.

1730. That is overwhelmed; when it would come to an even vote, if the chairman gave his casting vote against him, he would be beat?—That is my opinion.

1731. That is unless poor Mr. Newton was protected by a good majority he might be overwhelmed—Of course the best man in the world would be.

1732. He looks like a man that would happen to. At all events you wish to get on in peace and quietness here?—I do.

1733. How long is Mr. Newton here?—Oh, he must have been born in this town; according to my notion he is here 46 or 47 years. Whether he was born or brought here, I know during my time he is in it.

1734. And I suppose you and he always got on well together?—Well, I never saw any deception in him.

1735. I suppose you know him a long time?—I do.

1736. Before he was a magistrate at all?—I did indeed.

1737. And I suppose he is a man that can do a turn to serve another?—Well, I would say so.

Sergeant *Armstrong*.—Is this to the credit of the witness?

Mr. *M'Laughlin*.—It is simply to the credit of Mr. Newton, upon whom he has bestowed this praise.

Sergeant *Armstrong*.—You called this witness. You pointed his attention particularly to Mr. Newton. He has given his evidence; he is a respectable man. I see everything in his favour, and nothing to impeach his credit.

Mr. *M'Laughlin*.—It don't at all follow from what I said that I am impeaching this man's credit. I now say deliberately that the witness is just as respectable a man as Mr. Newton, and as creditable as any witness produced. I think that is enough.

Mr. Commissioner COFFEY.—The only effect of the examination was this, to show that he was a very great friend and admirer of Mr. Newton.

Mr. *M'Laughlin*.—Why should he not be? *Non constat* I may not be myself—at a respectable distance.

Mr. Commissioner COFFEY.—When you are out of this case.

Mr. *M'Laughlin*.—When I am out of the case, of course.

1738. (To witness).—Do you know whether with respect to the magistrates generally there is not a sort

of want of confidence in them as to party cases?—Well, I have from time to time heard murmurs against them, but for my own part I don't—

John Hagan, cross-examined by Sergeant *Armstrong*.

1739. You don't share in that feeling?—I don't interfere in these things.

1740. You mind your business?—I mind my business.

1741. You look like a man that minded his own business?—I don't know.

Mr. Commissioner *COFFEY*.—The Sergeant is undertaking to praise him now.

Sergeant *Armstrong*.—I have been praising everybody.

1742. (*To witness*.)—Is that a double-barrelled gun

you have?—I am not positive about it. I don't handle her often.

1743. Is she loaded?—Oh, no; it is a long time since I handled her.

1744. I am afraid it is a long time since you saw her?—Oh, no.

1745. When did you see her last?—There is some one in the house could handle her if I did not do it myself. She is there at all events when she is called on.

1746. Mr. Commissioner *COFFEY*.—Are you afraid of her?—Not at all.

1747. Sergeant *Armstrong*.—You are a sensible man. Are you afraid of anything?—No.

1748. Is it because you have nothing to be afraid of?—I am not trembling.

The witness retired.

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Mr. John Hagan.

David Mooney, M.D. sworn; examined by Mr. *M'Laughlin*.

David Mooney
M.D.

1749. Doctor *Mooney*, you are a medical man, resident in *Dungannon*?—Yes.

1750. And I believe you have been here for many years?—Upwards of twenty.

1751. You are a Catholic?—I am a Catholic.

1752. I suppose from your professional experience and your long residence here you know *Dungannon* pretty well?—Well, pretty well.

1753. You are called out amongst the people and all that?—Very frequently.

1754. Now, those drumming parties that are so prevalent here, do you think that they endanger the public peace?—I have no doubt about it.

1755. Did ever you meet any sensible man that had any doubt of it?—I never did; and many Protestants told me so, too.

1756. Now, do you think it would be a desirable thing to put them down?—I do, and all such assemblies.

1757. No matter from what party proceeding?—No matter from what party proceeding.

1758. No matter from what pretence got up?—No matter from what pretence got up.

1759. Regarding them all as equally obnoxious to the public peace?—Yes, particularly in a mixed community like *Dungannon*.

1760. I believe they are about half and half here?—Yes, about that.

1761. Mr. Commissioner *COFFEY*.—What is the Catholic population of *Dungannon*?—I think about 4,000.

1762. Mr. *M'Laughlin*.—I need hardly go through the form of asking you are these drumming parties offensive to you as a Catholic?—Yes, they are; and a greater nuisance, for they frighten my horse.

1763. They frighten your horse?—Yes, I have very often to drive.

1764. I suppose you have to drive out at night in the exercise of your profession?—I have to drive out at all hours.

1765. Have you met those people on the road?—Frequently.

1766. What sort of a display do they make—how many would be of them?—There is an unmerciful smashing of drums. You would pity the party that is doing it.

1767. They labour hard at it?—They beat the heads off the drums. I remember at the hill of *Killyman* seeing a man drive his arm through the drum head. He did not do it designedly.

1768. I suppose his zeal got the better of him and his fist went through?—Yes.

1769. Were there many drums on that occasion?—The last occasion I saw them I think there were five or six.

1770. Five or six drums?—Yes.

1771. All welting away?—I got the entire sound of them, and my horse was nearly going over the hedge with the fright which they caused.

1772. Have they any fair proportion of fifes?—Well, there is a fife amongst them.

1773. That is to keep the drums in company?—Yes.

1774. Do you think, Dr. *Mooney*, as a man whose profession teaches you habits of observation and judgment, that the local authorities, if resolutely and sincerely so minded, could put these things down?—I have not the slightest doubt of it.

1775. You have not the slightest doubt of it?—I have not the slightest doubt that they could.

1776. Why do you think they don't?—If they did not believe they would not, why would they be going to lawns and drumming.

1777. Whose lawns?—A magistrate's lawn.

1778. Do those drumming parties go to magistrate's lawns?—That is a question I cannot answer.

1779. Sergeant *Armstrong*.—Why do you say lawn?—When I saw them drumming at one magistrate's.

1780. Sergeant *Armstrong*.—Who is that magistrate?—Mr. *Lyle*, and his family were walking along enjoying it close to his place.

1781. Sergeant *Armstrong*.—That is not Mr. *Lyle*'s lawn?—Close to his place; and his family were walking along laughing; and they were drumming at the Hon. *Stuart Knox*'s one night.

1782. Mr. Commissioner *COFFEY*.—Do you mean the door in the demesne?—Up at his hall-door.

1783. Mr. Commissioner *COFFEY*.—Is that within the demesne or in the street?—Inside his own gate.

1784. Mr. *M'Laughlin*.—Before you go into the demesne—on the road?—It would be on the road of course.

1785. About a stone's-throw from the road?—About that.

1786. Anyone passing along the road or passing in that part of the town could not help hearing it?—They could not.

1787. Now, I believe there is no doubt that there is confidence in the decisions of the local magistrates, except in party cases?—They are most honourable men in their private capacities as individuals, and in every other case I would have every confidence in them, but on that point alone I would not, and I believe no other person, a Catholic, could.

1788. Why?—Because they believe they are mostly all Orangemen, and have taken two oaths, one as an Orangeman, the other as a magistrate.

1789. Are you peculiar in your opinions on this subject or are your opinions entertained by your co-religionists here?—Well, I consider that they are.

1790. You, by reason of your educational and professional standing here, occupy rather an eminent position amongst the Catholics—would it be right to say that these feelings are confined to the humbler classes of the Catholics?—Well, of course they are, a great deal, but others feel them.

1791. Do you yourself feel annoyed?—I do.

1792. Did ever you know any Catholic to engage

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David Mooney,
M.D.

in a drumming party?—I never saw a drum beat by a Catholic since I was born.

1793. I suppose you were present in court when there was some inquiry made as to the possibility of modifying judiciously the constitution of the Bench by the appointment of Catholics?—No, I was not.

1794. Is it your opinion—it is only fair to ask you this, having regard to the social circumstances of the Catholics in the North of Ireland and in this district particularly, without going into the causes of it—is it your opinion that the people would be perfectly satisfied with the administration of justice in party cases by two stipendiary magistrates sitting on the bench?—I think they would in these party cases.

1795. Mr. Commissioner COFFEY.—Do you mean by that that the magistrates should have the assistance of two resident magistrates appointed by the government, or that two resident magistrates should deal with party cases exclusively?—Exclusively.

1796. Then according to your view and idea, you would not permit the local magistrates to take part on the bench in the administration of justice where party cases were concerned?—That would be my view.

1797. Mr. *McLaughlin*.—Do you agree with those who think that that would give satisfaction to the Catholics, and that they would not care a pinch of snuff whether the resident magistrates were Catholics, Protestants, or Presbyterians?—I don't think they would.

1798. That is your own opinion?—That is my own opinion.

1799. I ask you one further question. Is it your opinion, Dr. Mooney, that the peace of this district never can be secured until these drumming parties are put down?—That is my candid opinion.

David Mooney, M.D., cross-examined by Sergeant Armstrong.

1800. When was it you saw one of those bands playing on Mr. Lyle's lawn?—It was close to it. His own party were on the lawn, and the band was playing outside.

1801. When was it?—On the 12th July.

1802. When did you see one of the bands playing on Mr. Lyle's lawn?—It was on the road alongside, close to the lawn.

1803. Then you never saw them playing on Mr. Lyle's lawn?—I saw them close to the lawn—just immediately near it.

1804. Did you ever, on your oath—this is the first time I have put such a question to any witness—on your oath did you ever see any band playing on Mr. Lyle's lawn?—It was a mistake I made. It was his family were on the lawn.

1805. Don't mind his family——?—I have explained it——

1806. In the first place you never saw them playing on the lawn. You were asked by Mr. *McLaughlin* why did not the magistrates, in your opinion, put down these Orange drumming parties, or try to do it; and you answered, how could they when the bands went on their own lawns, and you mentioned Mr. Lyle's and Colonel Knox's?—I corrected that.

Mr. Commissioner COFFEY.—I understood him by his second answer to say that the band, or whatever it was, went along the road, and a portion of Mr. Lyle's family were inside the hedge.

1807. Sergeant *Armstrong* (to witness).—Does it not come to this—that you never saw an Orange band on Mr. Lyle's lawn? I want to have that distinctly; is not that the fact?—I corrected that this moment. I say on the road, and the family were on the lawn.

1808. Answer the question. Is it not the fact that you never saw a drumming party on Mr. Lyle's lawn?—I never did, inside the lawn.

1809. I am not talking of outside the lawn—you never saw them inside the lawn?—They were quite close to it.

1810. You won't answer. Did you ever see a drumming party inside of Mr. Lyle's lawn?—I have answered; I did not see them on the lawn, but close to the hedge.

1811. You never saw them on the lawn?—I saw them close to it, and the family inside.

1812. Did you see the band at Colonel Knox's door?—No; but they were going to it. I saw them on the road.

1813. On your oath did you see a drumming party at Colonel Knox's door?—What I saw was——

1814. Answer the question—did you see an Orange drumming party at Colonel Knox's door?—[Not answered.]

Mr. Commissioner COFFEY.—Answer the question directly, "yes" or "no;" and then you may qualify or explain anything you like, but answer directly.

1815. Sergeant *Armstrong* (to witness).—Having received that admonition from the Bench, answer me. Did you ever see a drumming party playing at Colonel Knox's door?—I did not; I was not with them to see them; but I heard the drums at it.

1816. Did you ever see a drumming party playing at Colonel Knox's door?—I could not see it, for I was not in——

1817. Then you did not see it?—So I said.

1818. Do you know there is such a thing in Dungannon as the town band, which is not an Orange band at all?—There was a town band in it.

1819. Do you know that the town band is not an Orange band—do you know there is such a thing?—I do.

1820. On your oath was it not the town band you saw in the demense?—It was a mixture.

1821. Was it the town band you saw going in?—It was a mixture.

1822. Was it the town band?—[Not answered.]

Mr. Commissioner COFFEY.—Surely you can answer "yes" or "no."

Witness.—The town band was there, but others were along with it.

1823. Sergeant *Armstrong*.—The town band was there?—The town band was there.

1824. You are fond of your own mixtures, being a doctor, but don't be compounding the bands. You say, on your oath, the town band was there and others with them. Tell me the name of another soul there that was not a member of the town band?—I cannot tell.

1825. On your oath were there not two Roman Catholics in the very band you saw going into Colonel Knox's?—I don't know.

1826. Don't you know there are Roman Catholics in the band?—I don't know—only the teacher—only the band-master.

1827. A very prominent member I should think. The teacher of the band is a Catholic, and yet you represent this as an Orange band going to play at Colonel Knox's door. To be a little pleasant after that storm, was that hunter of yours so very much frightened?—He was a horse.

1828. Was he a hunter?—No.

1829. Did you keep no hunter?—No.

1830. Do you hunt?—No.

1831. Mr. *McLaughlin*.—Now, as to the town band, you say there were others with them?—Yes.

1832. The bandsman is practically the sergeant of the band?—So I understand.

1833. And he is employed just in the same way as Protestant counsel is employed to defend a dock full of Catholics?—Yes.

1834. Mr. Commissioner COFFEY.—Is this town band a drumming band, so called?

1835. Mr. *McLaughlin*.—I will make that clear (to witness).—Do you happen to know whether the town band contains a single person who is a Catholic?—Never that I heard.

Mr. Commissioner COFFEY.—Surely that is no proof of offence. If a band is got up for amusement, and not to engage in what I call a nuisance—a public nuisance—they have a right to go where they like without the slightest imputation on them, or on those who receive them, or let them into their lawns.

Sergeant *Armstrong*.—I would say so.

Mr. Commissioner COFFEY.—I would be very glad if there was neutral music, that all parties could join in and amuse themselves without quarrelling.

Mr. *M'Laughlin*.—I know all about this thing.

Mr. Commissioner COFFEY.—But I want to distinguish the substance of the complaint, and not mix it up with what would involve a collateral inquiry.

1836. Mr. *M'Laughlin* (to witness).—Do you think it possible that a town band, being all of the same sort, could be used for the purpose of a party display?—By no means; it could not.

1837. You mean a town band properly so called—a town band?—It could not be in that case.

1838. Do you mean to say if there was a lot of people here—

Sergeant *Armstrong*.—Don't be asking leading questions.

Mr. *M'Laughlin*.—I am satisfied to leave it as it is.

Mr. Commissioner COFFEY.—Do you wish to ask him any other questions?

Mr. *M'Laughlin*.—No.

Mr. Commissioner COFFEY.—I know one town in the north of Ireland which I have to visit four times a year, and where, I am happy to say, there are no drumming parties, but there are bands in the town for the amusement and recreation of the public, and no human being takes the slightest offence at it.

1839. Mr. Commissioner EXHAM (to witness).—With respect to the magistrates and their decisions on party questions, can you tell me a single instance in which you felt that the magistrates had not acted quite right and impartially on a party question being brought before them—a single instance?—Well I might form an opinion, but I could not just decidedly say that. But I may say I was present on one occasion, and was giving medical testimony in a case, and I was not quite satisfied with the magistrates' decision, and I asked one of the magistrates—(it was not in this district)—I asked one of the magistrates would he let the man off on bail without fining, as he had suffered enough, and it was only a passing row, and this man happened to be a Protestant.

1840. When was that, and where was it? Was it at Dungannon Petty Sessions?—It was not here; it was in Stuartstown district.

1841. We are not inquiring about the Stuartstown magistrates. I am talking of the magistrates attending Petty Sessions in this district?—I never have been here unless when summoned to give evidence.

1842. I ask you in any case in which you ever gave evidence, or was present when a party question came before the magistrates and was investigated, can you give me a single instance in which you yourself came to the conclusion I have mentioned?—I never was in court to hear a party case; I would not come.

1843. With respect to this town band, do they play through the town on occasions, or in their own private room?—They used to play when the band-master was

teaching; they don't do so now, nor have I heard them for a considerable time. It was after the last elections that this band got their instruments (at least I was told so) from Major Knox.

Sergeant *Armstrong*.—You have no right to say what you were told; it might be used as an opportunity for circulating unfounded slanders.

1844. Mr. Commissioner EXHAM (to witness).—Can you give me any instance in which the town band was used either for a drumming party or a party purpose?—This instance is the only one.

1845. You mean the occasion when they went into Colonel Knox's?—There were other drums as far as I could see with them when they went into Colonel Knox's. It was after he had presented the band with the instruments, a good while, and when he was coming home.

1846. He had presented the band with instruments?—Yes.

1847. I see. Then on one occasion when he came home they played outside his door; is that it?—Yes.

1848. On that occasion, when you heard them, were they playing party tunes, or offensive tunes?—I would not know a note of party tunes.

1849. Sergeant *Armstrong*.—Do you know that Colonel Knox was a subscriber to the fund by which they were to get the instruments?—I never knew of it.

1850. Did you subscribe anything yourself?—No.

1851. Are you fond of music?—Sometimes.

1852. Mr. *M'Laughlin*.—One of the Commissioners asked you as to whether this town band had the reputation of the drumming bands who drum so frequently?—[Not answered].

Mr. Commissioner COFFEY.—I will tell you, Mr. *M'Laughlin*, again how the evidence given affects my mind, though I know I am committing a great offence in doing so. According to the evidence of this gentleman there is a band that is called the town band; this band has never been seen, at least so far as he is aware, at any of these drummings in the evening or night, producing noise and annoyance; that this band did, on one occasion, go into Colonel Knox's place; but I assume, unless the evidence shows the contrary, that that was not only an innocent but a very laudable transaction—namely, to pay a compliment to the person who made them a present of some instruments. That is the impression created on my mind; remove it if you can by evidence.

Mr. Commissioner EXHAM.—I take it that this town band is not looked upon as offensive, or an insult, by the witness or the Catholics of the town; it is the drumming parties they look upon as the insult.

Mr. Commissioner COFFEY.—I don't think any human being could come to the conclusion that this particular band is offensive, or likely to create apprehension of a breach of the peace.

The witness withdrew.

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David Mooney,
M.D.

Mr. Patrick Flanagan sworn; examined by Mr. *M'Laughlin*.

Mr. Patrick
Flanagan.

1853. Mr. Flanagan, you reside in Dungannon, I believe?—I do.

1854. In Scotch-street, I believe?—I reside in Scotch-street.

1855. You have been living for a number of years in Dungannon?—Yes, about twenty years.

1856. You are a Catholic?—Yes.

1857. Your business, I believe, is that of an auctioneer?—Yes, that is one of my occupations.

1858. And what else?—Well, that is my principal business.

1859. I suppose you know about these drumming parties being frequent of late?—I have heard them frequently ever since I came to Dungannon.

1860. Latterly are they more frequent or less frequent than before?—During the last seven or eight years they have increased.

1861. Is it your opinion that they create alarm and

terror in the minds of one particular class of the community?—It is.

1862. Is that your own personal feeling?—I know that they create alarm.

1863. Are they offensive to you as party displays?—Well, they are annoying to me as an Irishman, for I believe they retard the progress of the country, but if left individually to myself I would despise them.

1864. Do you remember '65, when the houses were wrecked?—I do not. I was not here.

1865. I believe there is a prevalent opinion—it is only a waste of time to go further into this—that they endanger the public peace; do you agree in saying so?—I do.

1866. Would you put them down if you could?—Certainly.

1867. And no matter from what party proceeding?—I would put down any display that would give

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offence, retarding the progress of the country, or creating disturbance or annoyance, no matter from what party it came.

1868. Do you know whether or not the Catholic party have indulged in these drumming displays?—I know they have not here.

1869. Do you know there is a tendency on their part to get up opposing drumming displays?—I heard it, but don't believe it was ever seriously entertained, but I heard it would be one of the modes of putting down the other drumming parties, if it was done.

1870. It would create a row, and compel the authorities to interfere to prevent bad work?—Yes.

1871. Do you know all the magistrates here?—I do; by appearance I know them all, and I know nearly all.

1872. And I suppose you know they live within the borough of Dungannon, or a short distance of it?—I know where they all live too.

1873. And I believe these drumming parties very much pervade the district in which these magistrates reside?—I should say so.

1874. There is no difficulty in hearing them in the town and neighbourhood?—They are very easily heard.

1875. Do you think the magistrates could put them down if they were so minded?—I am sure of it.

1876. Do you think that could be done by the exercise of the official influence of the magistrates solely, or by their combined influence as magistrates and country gentlemen?—I believe the magistrates could put them down.

1877. How?—By the law.

1878. What law?—The common law of the land.

1879. You have been reading Ex-Lord Chancellor Brewster's letter?—I have been reading Ex-Lord Chancellor Brewster's letter, and from that letter I gather that the common law of the land is sufficient to suppress all disturbances calculated to create terror and alarm.

1880. You know the common law and I agree with you. Can you assign any reason why that view of the law is not practically adopted by the magistrates as far as you know?—Well, my view is —

Sergeant *Armstrong*.—I will not have your view.

Mr. *McLaughlin*.—Then don't give it until the Sergeant cross-examines you.

Sergeant *Armstrong*.—It is entirely too wide.

1881. Mr. *McLaughlin* (to witness).—I suppose in an ordinary case you would have confidence in the decision of the magistrates?—I would have the most implicit confidence in the decision of every magistrate connected with the bench except in connexion with drumming parties.

1882. That is your way of describing party cases?—It is. I believe there is not a better or more respectable bench of magistrates in Ulster—except in drumming cases—I won't even include ordinary party cases. I believe if I had a conflict with an Orangeman and we came down here to this bench of magistrates I would meet justice from any magistrate on it, but they have a craze about party processions and drumming parties—not party processions but drumming parties.

1883. I suppose it will be suggested you have a craze about them in drumming cases, still you think highly of and praise the magistrates?—Indeed I praise them highly. I respect them as highly as any one could respect them. I speak sincerely from my heart what is my honest conviction.

1884. You are not saying it to please me although I know it to be your evidence. But with regard to the drumming parties, which is the matter we have particularly in hand, you think that by a happy ridance of that craze the magistrates might be brought round. Now, what would be the mode of treatment—to use an expression that would be appropriate to Dr. Mooney—you would prescribe for the patients?—I could not control the magistrates, but as I told you I believe the magistrates can put them down by having recourse to the common law of the land. I know that funeral displays over the country, in Cork, in Limerick, in Waterford, and other places, being calcu-

lated to create ill feeling, have been put down by the magistrates by proclamation, and I know that in the House of Commons the Marquis of Hartington stated that the local magistrates are the judges of how to manage these things.

1885. Do you think that in these drumming party cases the local public here would have confidence in the law as administered in these cases by two resident magistrates instead of by the local magistrates?—Oh, I think they would.

1886. Do you think they would care one straw what religion the resident magistrates were if they did their duty on the bench?—Well, I would not drive a Catholic off the bench. My feeling—the one I generally act on is—to believe in a liberal Protestant, but I would not drive a man off the bench because he was a Catholic, or say I had not confidence in him because he was a Catholic, but I admire a liberal Protestant.

1887. Like Colonel Knox?—Or Sergeant Armstrong.

Surely the Sergeant will not cross-examine you after that.

Sergeant *Armstrong*.—I hope you have a vote in Dungannon.

1888. Mr. *McLaughlin* (to witness).—Now that we are on the subject of politics, did ever you hear of a man named Dowse?—I did.

1889. His name is Richard?—His name is Richard.

1890. And he is Solicitor-General for Ireland?—He is Solicitor-General for Ireland and member for Derry.

1891. Would you know him by the shape of his head if you saw his effigy?—I would not.

1892. You have not seen him lately?—I have not seen him and I don't care if I never see him.

1893. I am instructed that he was burned in effigy here some time ago?—It was the common opinion at the time that the effigy of Sergeant Dowse was burned in the neighbourhood of Dungannon.

1894. Sergeant *Armstrong*.—Were you at the burning?—Indeed I was not. I said it was the common opinion.

1895. Mr. *McLaughlin*.—Do you remember the night that that took place?—I do.

1896. Do you know Windmill Hill?—I do.

1897. Did you look towards it that night at all?—I could not go to my own door (I have not a distinct recollection of the bonfire; it is not before my mind's eye)—but I could not go to my own door without seeing it.

1898. Then you did see it?—I believe I saw the fire.

1899. That was the remains of the learned gentleman—we will prove it otherwise. Do you know whether you heard any firing that night?—I heard a great deal of firing.

1900. You heard a great deal of firing?—Yes.

1901. Mr. Commissioner COFFEY.—Gun firing?—Gun firing, and a great deal of drumming—inconstant firing.

1902. Mr. *McLaughlin*.—File firing?—Well, I am not a military man; I could not say.

1903. Was it in quick succession?—Yes.

1904. Like minute guns at sea. There were a great deal of shots fired?—Plenty.

1905. And a good deal of drumming?—A great deal of drumming.

1906. Although you heard the shots fired you were not near enough to them?—I was not within range.

1907. You may thank your stars for that. From the evidence of your senses—I mean your auricular senses—did it seem to you that the drumming and the firing both proceeded from the same locality?—It did; it was evident.

1908. Did it seem to you from the evidence of the senses in question that the party from whom the firing and the drumming were proceeding was coming near the town as you listened?—Yes, I heard them coming into the town—proceeding towards town.

1909. Scotch-street runs down hill from the bottom of Market-place?—It does.

1910. Are you able to tell whether they came into the town—when you heard them—or not with respect to the same senses?—I am not of my own knowledge able to say whether that party came into the town, but I went down to the end of Scotch-street—convenient to Moon's Hotel, and I heard a volley of stones hopping off the window shutters, which made me retire.

1911. What party did the stones come from?—I cannot tell.

1912. Then I suppose you thought it better to beat a skilful retreat up to your own house?—No doubt of it. I went up to my house.

1913. And shut the door?—No, I did not shut the door.

1914. Did the firing of the shots continue up the street?—It did not up the street. There was no great firing of guns above Moon's corner.

1915. Is not Moon's corner some distance up the street?—No, it is at the cross street.

1916. Does Scotch-street end at Moon's corner?—No, it is Scotch-street further up than that, but I was not further up than that.

1917. Did you hear any gun-firing in Scotch-street that night?—I heard gun-firing coming along from Moon's Hotel into town, but I could not say where. I heard the shots coming nearer and nearer along the road.

1918. The natural development of which would be Scotch-street?—Oh, decidedly.

1919. You did not shut the door?—I did not shut the door. I had no occasion.

1920. Did you stand at the door?—I was out and in, walking up the street.

1921. What time of the evening was this?—I would say half-past nine or ten o'clock.

1922. Mr. Commissioner COFFEY.—Was this in February?—I think in February. I don't remember exactly.

1923. Mr. *McLaughlin*.—It is No. 7 in the bill of particulars. (To witness).—You know Mr. Newton?—I do.

1924. And you know Colonel Knox?—I do.

1925. Not having the honour of knowing Colonel Knox, kindly point him out to me in court?—Colonel Knox is in the gallery, sitting next to Mr. Burgess.

1926. Did you see Colonel Knox and Mr. Newton on that occasion?—I saw Mr. Newton and some gentlemen with him. I don't remember who they were, but I have reason to believe Colonel Knox was one of them.

1927. I believe they were standing calmly round the remains of the burning pyre?—They were standing at the head of Scotch-street, round the embers of a tar barrel.

1928. No more honourable position. Mr. Newton, a gentleman you believe to be Colonel Knox, and some other persons whose names you cannot now give were there?—I don't know how many.

1929. Was that about the time the stones were being thrown?—Oh, no. There was no stone throwing at that time. It was in a different part of the street. It was at the head of Scotch-street.

1930. How long after the stone throwing had you gone into your house?—A very short time after. About twenty minutes.

1931. Or quarter of an hour?—Yes.

1932. Did you observe any interference by those gentlemen, or any of them, with the Orange party?—I saw no Orange party as such, that I knew as such.

1933. Did you observe the party that appeared to be in antagonism to the Catholic party?—I saw parties coming along about the head of Scotch-street. I saw a party running out of Babe's-entry and making use of opprobrious epithets regarding Colonel Knox and some of the magistrates, and I heard defiant cheers given at the head of Church-street, and then there were cheers from the other party. There was a sort of gathering of mobs, the opposite parties cheering and yelling, but there was nothing in the shape of stone throwing or collision of any kind further than shouting.

1934. But they did not seem to be in very good temper with each other?—No.

1935. Mr. Commissioner COFFEY.—They were skirmishing preliminary to a fight?—A rush would be made in a certain direction, then they would retire again.

1936. Mr. *McLaughlin*.—This was after the firing of the guns?—A good while after it.

1937. Is there not a way of getting round from Moon's corner to Church-street by Park-road?—There is.

1938. Do you know whether any one was arrested that night?—I did not hear of any body.

1939. Of either party?—Of either party.

1940. You never heard of any one being summoned or prosecuted?—I never did.

1941. That disposes of that case. Now, do you know where the chapel is?—Yes.

1942. Do you remember one night in December, 1867 (this is No. 5), when there was evening service in the chapel?—There is evening service in the chapel at the beginning of every December.

1943. Were you amongst the worshippers there this particular night?—I was on one night in December, in the beginning of December, I think, but I cannot fix the date.

1944. Do you remember, before the congregation had dispersed, a drumming party coming along there?—It was usual at that time for drumming parties to be on the Killyman-road, some place below the chapel. They were frequently there.

1945. Does the Killyman road pass in front of the chapel?—At the end of it.

1946. That is the extremity of it?—Yes.

1947. As I understand you, the Killyman road then joins the road that is an extension of Northland-row, towards the chapel, that is one end of the Killyman road?—Yes.

1948. Now, on this particular night, to which I am directing your special attention, did you hear drums beating while you were in the chapel?—I heard drumming when I was coming out of the chapel. I don't remember where it was going on, but on coming out I heard the drumming.

1949. Mr. Commissioner COFFEY.—What evening was this—was it the Sabbath or a week evening?—A week evening.

1950. Sergeant *Armstrong*.—But you cannot recollect the year?—I cannot.

1951. Is it within the last six or seven years?—Yes, within six years.

1952. Was it after 1865?—I told you I believe so. I believe it was since 1865.

1953. Mr. *McLaughlin*.—Without going into particulars, which should not be detailed here, there was on this occasion a special service in the chapel, applicable on week nights to that portion of the year?—I have said in every December.

1954. With reference to the religious pastoral that occurs at that time?—Yes.

1955. When you came to the chapel door what did you see and hear?—When I came to the chapel gate, a large crowd, principally composed of women, were standing looking down the Killyman road, considering whether it would be prudent to go down or not. They were standing listening to the drumming, and seemed to be hesitating as to whether they should go down the road or not. I went past them and came on home.

1956. Then the prevalence of these drumming parties create a good deal of annoyance and terror in that way?—Well, I would say these people were terrified, and if I was going down that road I would be terrified at that hour of the night from going in the way of meeting that party.

1957. I suppose that is an additional reason why, in your opinion, they should be put down?—I have several reasons for it.

1958. Do you remember the day the Orangemen came back from the Lisburn excursion?—I do.

1959. Did you see them before they went away?—

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I saw them going in the morning at six o'clock, passing the head of Scotch-street.

1960. Had they any musical instruments, if one may so describe drums?—They had music, a fife and drum; whether more than one I could not say.

1961. Mr. Commissioner COFFEY.—Were they playing?—They were. The noise of the drum waked me. I am not an early riser. I ran to the window to see, and I saw the party passing just at the head of Scotch-street.

1962. Mr. *McLaughlin*.—Did you see whether they were marching in procession or not?—Well, it was very irregular if it was a procession; they were in a straggling body, and not many of them either. I saw them in the evening coming back.

1963. Was there any stone-throwing that night, as far as you know, or window breaking?—I know there was stone-throwing, but I was not present when stones were thrown. I think they were thrown at the head of Irish-street before I got forward. I was behind. When I went to the foot of Church-street I heard the drumming coming from the vicinity of Northland-row. I waited until they came into town, and walked up after them into Church-street. I stayed behind them still, and at the head of Irish-street stones were thrown, and one struck me. I heard the stones hopping off the windows and doors, but I was not present at the stone-throwing. In a few moments afterwards there was great commotion and scene of riot.

1964. Describe it?—Well, there was cheering. The stones were not thrown in my presence, but there was immense cheering and defiant cheers on both sides, and the street was in a very troubled and disordered state, and the police had to stand there for an hour; I would say half an hour was nearer to it; but the police had to stand there during all that time to keep the people asunder for fear of a collision, and I need not say what I was told—

1965. No; but did you see anyone arrested that night at all?—No.

1966. Or hear of anyone being arrested?—No.

1967. Or of anyone being summoned or prosecuted for that?—I did not hear of it.

1968. Would you say, having regard to the residence of the police locally here, and having regard to the number and character of the parties, there would be a possibility of identifying them?—I should think by watching the parties in the street they would be known.

1969. Do you think there really will be peace or quietness while these drumming parties are tolerated?—Certainly not, there cannot be.

Mr. *Patrick Flanagan* cross-examined by Sergeant *Armstrong*.

1970. Mr. Flanagan, do you know any of the people yourself who were at the burning of this effigy—who were apparently coming away from it?—Indeed I do not. I did not see any effigy burned. I said it was a common opinion.

1971. I understand you perfectly. You refer to such a transaction as a matter spoken of?—It was spoken of days before in the town.

1972. How long are you in this town?—Twenty years.

1973. You have a very general acquaintance with the people?—Well, from my residence I know some; but there are people in the town the same length of time who know more than I do.

1974. But still have you not a general acquaintance with the people of the town?—Well, I have.

1975. I am told you were at one time connected with the post office?—I was.

1976. That took you very much, I take it for granted, through the town at that time?—That is ten years ago, I knew everybody in the town nearly.

1977. I would say so naturally from your appointment. I believe at present you follow the business of an auctioneer?—Yes.

1978. And I suppose that brings you a good deal

in contact with the people?—Well, as I said before I don't know the people as well as others who don't know the town so well.

1979. But it happened, although you are twenty years in the town, you did not know any of the crowd coming away from the supposed burning of the effigy?—I was not there at all.

1980. But did you not see them?—Yes. I don't believe I saw people at it at all, nor did I say so.

1981. Did you know any people to have done anything wrong that night?—I did not go amongst them, but I heard those who spoke of Mr. Newton and Colonel Knox using abusive epithets.

1982. What party were they?—The party doing that were the Catholic party.

1983. How near were you to the crowd about that time?—I was not near them, nor did I go near them; I am rather timid; I am not much of a fighting man, and I generally keep away from anything in the shape of a mob.

1984. That accounts for your retiring disposition?—I am not retiring.

1985. Were there any loose people in the street the night you saw Colonel Knox and Mr. Newton near the tar barrel?—When I went to Scotch-street there were very few in it, the portion I walked down; the people were just coming in from the burning, and I heard the stones thrown; and, as I said before on the direct examination, I thought it prudent to retire, and I came up the street, and I saw the gentlemen I have named standing round the dying embers of something in the shape of a barrel.

1986. At the time you saw Colonel Knox and Mr. Newton at the tar barrel how near were you to them?—I did not say Colonel Knox, I said Mr. Newton and some gentlemen.

1987. Did you see Colonel Knox out that night at all?—I could not say. I saw a tall gentleman out with Mr. Newton, whom I believe to be Colonel Knox from the observations made by other parties.

1988. You think you saw Mr. Newton, Colonel Knox, and somebody else?—I do.

1989. Were any people near them at all?—I would not say near them.

1990. How far off were they?—I think they (Colonel Knox and Mr. Newton) had some policemen with them.

1991. That is what I want. You heard these defiant cheers from the people on one side answered by the others. Did you observe that when the policemen went towards the people they scampered off as fast as they could?—I did not observe it, but it is very likely what they would do.

1992. And the policemen could not get at them. Did it ever occur in Dungannon that the very minute a policeman showed his face everyone gets away?—I often heard that the police always came when the row was over.

1993. Do you expect them to wait all night in the hope of catching some one?—I am not making any charge against the police.

1994. You say there were two crowds shouting at each other. Are you able to tell me what sort of people they were composed of?—A gathering of boys and different sorts of people, I would say.

1995. You would not say the decency of the town was represented at either side?—Indeed I would not.

1996. Would I be right in saying that there is in this town as in most other towns what is called a mob?—Well, yes, I don't know that I would call them a mob.

1997. I think you might call them a mob; at all events were those fellows shouting at each other?—They were.

1998. And they were mostly youths who could throw stones?—Yes.

1999. And some women?—I don't think there were any women.

2000. But there were young men on both sides. Did you know any of these boys?—I did not know

any of them. I did not go amongst them or near them.

2001. In all the "ructions" you ever saw going on in town, did you ever know anyone who took part in them?—I never saw any riot in town as far as I can remember.

2002. Did you hear drumming parties?—Frequently.

2003. Did you know the men in the drumming parties?—I never saw a drumming party as such that I remember only the one coming back from the Lisburn excursion; the one Mr. McLaughlin asked me about.

2004. Did you know anyone in that?—I did.

2005. Did you report them to the police?—I am not an informer nor a policeman either.

2006. I don't blame you in the least, don't think it?—I really think you have no right to ask me such a question.

2007. I am not saying anything to you—I am merely asking you a matter of fact?—But I think, with all respect, you have no right to ask such a question.

2008. I will tell you why I ask you?—I hope the Commissioners will protect me from such a question—do I report everything I see to the police.

Mr. Commissioner COFFEY.—There is no imputation whatever on you.

2009. Sergeant *Armstrong*.—If the police come up when the thing is nearly over and the fellows are away and the decent people who know them won't tell, what are the police to do?—The police met this party you are talking about—the drumming party in Northland-row and were along with them to the head of Irish-street.

2010. Did you take any of them prisoners?—No.

2011. You were not with them?—I was with them.

2012. Marching along with them?—I was behind them.

2013. Why did you not knock them all down—were you not laughing at them?—I was not laughing at all; it was too serious a matter to be laughing at. If you were in my position you would not laugh at it either.

2014. What in the world business had you out walking along with them at all. What took you there?—I will tell you what took me there. At that time I was a news agent and I was in the habit of communicating some intelligence to a certain newspaper. I went there in the capacity of a newspaper correspondent to see what occurred, and I did report the occurrence.

2015. That is most satisfactory as a matter of history?—And as a matter of fact.

2016. That is better. And you reported it correctly?—I reported it correctly and truthfully, and that is what took me there, or you would not find me there at all.

2017. Where did the police leave these people?—The police marched along with them from the foot of Church-street until they went to the head of Irish-street and to the place called Union-place, where an Orange lodge was at that time. The drumming party went into Union-place, and the police stood at the head of Irish-street between the drumming party and the other party that came to attack them, I believe.

2018. On this night of the 1st July, 1868, when the party were coming home from Lisburn, did they play tunes as they came along?—Yes.

2019. In town?—Yes.

2020. You were marching with them?—I was marching with them.

2021. Now don't be angry?—You won't anger me.

2022. Was not that the reason you never complained—lest you should be prosecuted with the Orangemen for marching in town?—No, I say I would not complain, nor have I ever made a complaint to either magistrate or policeman. I would not do so. It is no part of my duty.

2023. Were you not in great danger—suppose the police took you up as a processionist and you got two months?—But the police are not in the habit of taking up processionists.

2024. So you had no apprehension of being taken

up?—Not the least. I was in good company. I knew I was quite safe.

2025. Then they went into their lodge?—They went into their lodge.

2026. And you went home?—I stayed there for some time, thinking I could be of assistance in keeping the peace. I think Mr. Smith can testify to that, for he saw me there.

2027. You saw Sub-Inspector Smith there?—I did.

2028. Tell me this, if you please. Did you go down the Killyman road that night of the annoyance at the chapel?—I did not.

2029. How far away was the band?—I would say a quarter of a mile. It was said to be at a place called the Lime Kilns, which I would say is a quarter of a mile from the chapel.

2030. And you did not go down towards it at all?—I did not.

2031. Are you aware whether they disturbed you in the chapel?—I don't know whether we heard it in the chapel or not.

2032. You don't recollect?—No.

2033. That is quite fair. You appear to have been studying Lord Chancellor Brewster's letters attentively for the last four years. I am sure he will feel very much complimented when he hears it?—I cannot help that; if it annoys him in any way I cannot help it.

2034. Annoys him! He will be as proud as a peacock. Now, will you be good enough to tell me how you would stop the drumming parties?—As soon as I am selected as a magistrate I will tell you all about it, but there is no use now.

2035. You said something awhile ago about your mind's eye. What is in your mind's eye as to stopping these drumming parties? What part of your body is your mind's eye in first?—That is an abstruse question I will not go into at all.

2036. Tell me honestly and fairly?—That will do.

2037. You won't answer an historical question?—I won't joke with you.

2038. I never joke with any man; I don't like it. Tell me if you were a magistrate, what you would do as a sensible man. Of course you would hold Lord Chancellor Brewster's letter in one hand, or you would have it in your pocket; armed thus with the common law in one pocket, what would you have in the other—is it a revolver, to keep the peace?—I don't think it is fair to put me in the position of a magistrate, for I never will attain the bench. If I did, I would show what I would do.

You don't know what you may come to yet; things that we least expect happen. It is hard to tell the misfortunes of anyone. They may be inquiring about you yet.

Mr. *McLaughlin*.—I don't know whether the Commissioners will agree with the Sergeant that it is absolutely necessary to pursue this line of cross-examination.

Witness.—Leave him alone. This has put a train of thought in my mind that is of great use to me.

Sergeant *Armstrong*.—Why should the witness be deprived of this little oasis in the desert of magisterial expectancy.

Mr. *McLaughlin*.—I will answer readily. This is a line of cross-examination very peculiar, and having regard to the numbers of other people to be cross-examined, I think it is setting a very inconvenient precedent; at the same time, I don't think the cross-examination is likely to result in anything except what is damaging to the other side.

Mr. Commissioner COFFEY.—I am full sure the Sergeant will do whatever is right, and I think the cross-examination is not unfair having regard to the early point of the witness's evidence.

Sergeant *Armstrong*.—And I say, unaffectedly, I regard Mr. Flanagan as a pleasant, honest man.

Mr. Commissioner COFFEY.—I don't think you are doing him any damage at all. I think he is quite equal to the Sergeant.

Mr. Commissioner EXHAM.—I think the Sergeant has got his match.

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2039. Sergeant *Armstrong* (to witness).—Regarding your evidence as the evidence of a man of sense and of thought, and a man with a mind's eye—Horatio—under the present circumstances what would you do—how would you, as a man of common sense, stop drumming parties?—If you insist on putting me into the position of a magistrate I will accept the position. As I cannot get out of it, I accept it.

2040. You must accept the position?—Very well. When you are Lord Chancellor I hope you will remember me.

2041. Have the kindness then to tell me how you would manage—what you would propose to do—what you would do?—Every time such a thing was brought up before me (of course I am a magistrate now, and acting as such), every time, I say, such a thing was brought before me I would denounce it, and show I had no sympathy with it, and I would not compare it with drummings, or riotous displays or processions in the south of Ireland, and throw one against the other. I would show that I would act in my own district as a magistrate; I would enforce the law, and let the people see I would enforce the law, and not be going on the “tit for tat” business. I would encourage the police to do their duty, and exhort them to bring the offenders before me. All this could be done. I am prepared to swear it can be done. I am giving you a knowledge of the law you did not know before, Sergeant.

2042. I assure you, sir, you never had a more docile pupil. Would you allow me to ask you, have you been in the habit—for you have a great deal, not merely of judicial, but of forensic eloquence—of attending petty sessions?—Well, not very much. I have attended petty sessions—I would not say frequently, but occasionally.

2043. On what business? Was it on your own private business?—I never was before petty sessions except as a witness. I attended for curiosity when a case was under discussion which left a great impression on my mind's eye. I was in the court-house the day the law adviser's letter was referred to, and I think the demeanour of the magistrates on that occasion was not calculated to decrease drumming parties, but rather to increase them.

2044. Tell me what was the demeanour?—Well, by their aspect and manner it appeared to be understood in court that they did not agree in opinion with the law adviser.

2045. State anything any of them said?—I won't say what any of them said.

2046. That is the point. You say their demeanour on the occasion encouraged drumming parties. Did they say anything? What is it you call demeanour? Did it manifest itself in language? If so, state what it was?—No; I have an objection to state anything that was said.

2047. I want anything that was said, and by whom?—Well, Mr. Newton stated an extract from the law adviser's opinion, and he said in accordance with that opinion he would feel bound, notwithstanding he had an opinion of his own, to send the parties for trial if they were brought before him.

2048. That was his public declaration, that he would act on the law adviser's opinion?—Yes; notwithstanding his own opinion.

2049. That he would act on the law adviser's opinion, and if the parties were brought before him, he would send them for trial?—Yes.

2050. Did you not regard that as a very partial decision?—As a very partial decision?

2051. Yes?—I did not regard it as a very partial decision, but I regarded the way it was given as showing that he did not agree with it; and if I were a member of a drumming party, I would say, I may have a chance of escaping if I am caught in one.

2052. Can you tell me anything else Mr. Newton said, or that any of the rest said on that occasion?—[Not answered.]

2053. Did you not understand the unanimous

announcement to be that the law adviser's opinion would be acted on, and that any man who violated the law as laid down in that opinion would be dealt with?—Mr. Newton said he would send them forward notwithstanding his own opinion.

2054. Were you present on the occasion when any other partial decision was made?—I don't say that. I said before—I said on my direct examination that I had the most implicit faith in the magistrates' decisions as between man and man in every case, except drumming parties.

2055. They have a craze on that?—I believe they have. I believe they have something like drumming on the brain—

2056. Or in the mind's eye?—Allow me to finish my answer.

Mr. Commissioner COFFEY.—Certainly.

Witness.—I believe that individually the magistrates would like these drumming parties to cease; but collectively, or when they take the notion of this unfortunate thing of “tit for tat,” of processions through the country, that is what does the whole thing. They say there is one law for the North and another for the South, and I think it is some notion of that sort that they cannot get rid of, that if the drummers were members of the other party they would not be taken up. I believe the magistrates individually dislike these drumming parties; I believe they would individually put them down if they could, but when they come here as a bench this notion actuates the body.

2057. Sergeant *Armstrong*.—Did you ever hear a magistrate in Dungannon, on the bench or off the bench, in this district, refer to the exhibitions in the South of Ireland, or in any other place—what you call the “tit for tat”?—Well, about twelve years ago, or thirteen—

2058. We won't go into that. Did any of the present bench of magistrates?—Yes.

2059. Who was that?—Mr. Burgess.

2060. What did Mr. Burgess say?—Mr. Burgess said, addressing the attorney for the prosecution, in what you may call a party case, “I know party processions that are tolerated up the country.”

2061. Did Mr. Burgess say this on that occasion?—“I endeavoured to use my own influence to stop drumming parties, and the answer I got was, that such processions were permitted elsewhere”?—I must state that I heard Mr. Burgess say, “I am as much opposed to drumming parties as you are.”

2062. Did he say that he endeavoured to persuade them not to drum, and that the answer he got was, “drumming was permitted in other places, and we will not stop until that is stopped”?—I did not; but I recollect him saying, “I am as much opposed to party processions as you are.”

2063. Very well, that is twelve years ago. Were you ever present at other party cases?—Frequently, but I took no note of them.

2064. Did you ever see or hear anything that you will now swear was partial or improper from the magistrates?—No; but do you want me to give rumour.

2065. No; we don't believe all we hear. Was there a tar barrel burned some time before the effigy was said to be burned?—Some days; eight or ten days, I think, there was.

2066. Who burned that?—I think it was the parties who sympathised with Sergeant Dowse in Derry when the petition against him was dismissed.

2067. Is that what you call the Catholic party?—I do.

2068. They got a tar barrel down eight or ten days before, and burned it?—Yes, I think so.

2069. Was this burning of an effigy quite a modern idea; was it never heard of here before?—It was frequently.

2070. Who used they burn before?—Well, I heard of Mr. Gladstone being burned in effigy, and of the Pope being burned in effigy.

2071. Mr. *McLaughlin*.—He is used to a hot

climate they think. (To witness).—I believe Mr. Burgess does not often attend sessions?—He is not a frequent attender.

2072. And I believe there is no doubt of his being a fair man?—There is no better disposed gentleman in the kingdom of Ireland.

2073. Just so. As far as you know he is?—I believe so.

2074. You have been asked what took place in your presence at petty sessions?—Yes.

2075. Were you present during the police inquiry?—Yes; part of the time. I don't think I was the whole time.

2076. Were you present in court here when reference was made to an expression of Mr. Courtney Newton about "low, fighting Catholics"?—Yes.

2077. Did you hear Mr. Newton cross-examined by Mr. M'Mordie, this gentleman here, on that occasion?—Yes, I did.

2078. Do you recollect Mr. M'Mordie asking Mr. Newton on cross-examination (the question being put through a policeman, I believe that was the way it was done), whether these drumming parties were offensive to the Catholic population—did you hear that question put?—I did.

2079. Will you tell us what Mr. Newton's reply to that was?—Mr. Newton said they offended the low Roman Catholics; then he went on to say the "fighting men;" and then he went on further and said there were "fighting men on both sides." I think these are almost his exact words. "And I think I am bound to say," he added, "that no religious man would be offended." I think he added that.

2080. You heard that yourself?—Oh, plainly; I was sitting very convenient to him.

2081. Was Mr. Hayden there?—I think so.

2082. Mr. Commissioner EXHAM.—Let me ask you whether the Mr. Burgess you saw in court twelve years ago is?—He is the gentleman present here.

2083. About that tar barrel you saw that night, when Mr. Newton and a gentleman you suppose was Colonel Knox were standing by—that was after this effigy of Sergeant Dowse was burned?—It was.

2084. You saw that tar barrel lighted yourself?—I saw it when I was passing down Scotch-street—they were driving it along.

2085. I suppose the opposite party got up that?—They got it up as a reprisal for the other.

2086. Mr. Commissioner COFFEY.—It was the Roman Catholic party got it up as against the other one?—I think so. And when the parties pushing it up met the police and the magistrates they ran away, and when the magistrates stood round it, it died out.

2087. I understood you a moment ago to state that prior to the burning in effigy of Mr. Dowse, there was some demonstration here to signalize his success?—No doubt of it.

2088. About how many days intervened between the one and the other?—I have no data, but in the letter of the magistrates it is stated to be about ten days, and I think that is correct.

2089. Where was that demonstration in favour of Mr. Dowse held?—I think it began at the head of Anne-street, proceeded on until it came to Shamble-lane, and then came out into Scotch-street.

2090. Were there a number of persons collected together following that tar barrel?—There were a number of persons cheering around the tar barrel.

2091. That was in the town?—Yes.

2092. Was there any counter display on the evening that occurred by the other party?—There was not.

2093. Was any effort made to stop that by the police or the magistrates?—I remember when the barrel got up as far as Market-square, some policemen did gather round it and threaten to summon parties, but it was not done. That is my recollection.

2094. Sergeant *Armstrong*.—Was it in secret it was lighted up?—No, it was driven and pushed along, and I think there were more than one.

2095. On fire?—On fire.

2096. In the act of burning it was rolled on?—Yes.

2097. Mr. Commissioner EXHAM.—Do you recollect when the Law Adviser's opinion was read on any occasion?—It was not read on that occasion. It was simply referred to as being read at the previous petty sessions. I was not present when it was read. That was on a subsequent occasion. Mr. Newton referred to it as to what he would do when the Killyman funeral case was up before him. He referred to it.

2098. Can you tell us, of your own knowledge, whether in any case connected with drummings lately, brought before the magistrates, there was any expression of opinion by any of the magistrates alluding to matters occurring in the south, of a similar character, or in other parts of the north, in which the magistrates did not send forward the case for trial?—I remember no other.

2099. Mr. *M'Laughlin*.—With respect to Mr. Stanley's statement about a "trivial offence." (To witness) Were you present at the time the matter, with respect to the breaking of the chapel windows, was investigated?—I was.

2100. When Mr. Stanley was alleged to have said something?—I was.

2101. Tell the Commissioners what this gentleman said, and how he said it?—Well, Mr. Newton, I gathered—I was not conversant with what passed, but Mr. Newton wanted an inquiry into it at once—into the breaking of the chapel windows. He seemed very indignant, and wanted some sort of an inquiry after he had asked Captain Smith did he demand one, and he said he did. Mr. Newton was seemingly very anxious for an inquiry, and Mr. Stanley seemed to oppose the inquiry, and said he would not be a party to an inquiry, what he considered a premature inquiry into such a trivial offence.

2102. Mr. Commissioner COFFEY.—Was it stated at that time what the nature of the inquiry was to be into breaking the chapel windows, whether it was a public or private inquiry?—I think it was to be public. I think it was in the magistrates room the petty sessions were held that day, and the public were not asked to retire. The discussion went on in their presence, and I think it was to be a public inquiry.

2103. According to your recollection, Mr. Newton seemed very indignant, and asked Mr. Smith would he have an inquiry?—Mr. Newton was highly indignant, and very anxious for a preliminary inquiry.

2104. What do you mean by a preliminary inquiry?—I think it was a magisterial inquiry so as to anticipate the coming before them with informations, to take a sort of immediate proceedings, and not to wait until it was brought before the magistrates in the ordinary way. I conceived it to be that.

2105. Mr. Commissioner EXHAM.—Do you recollect whether or not the magistrates happened on that occasion to announce an opinion that the case ought to go to the Law Adviser?—No, it was only referred to that day. It occurred a night or two before. The parties were not brought up on that occasion for it at all. The parties were not summoned, nor were informations taken, nor were the parties before the magistrates, but I think Mr. Smith had reported to them—I may be altogether wrong—and that Mr. Newton then wanted an immediate inquiry, as he seemed to lay great stress on so daring an outrage. I may be altogether wrong.

2106. Mr. *M'Laughlin*.—Were you present at that particular part of the police inquiry, when Mr. Stanley was under the cross-examination of Mr. M'Mordie, the advocate for the policeman?—I was present when Mr. Stanley was being cross-examined.

2107. Did you hear Mr. Stanley say, when he was asked whether he was a member of an Orange society, that he declined to answer, unless the court would force him, and they did not?—I did not.

The witness withdrew.

Sergeant *Armstrong*.—Of course I am in a situation to prove accurately what did occur with respect to Mr. Stanley.

Mr. Commissioner COFFEY.—I assume we will have

THIRD DAY.

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Mr. Patrick Flanagan.

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Mr. Patrick
Flanagan.

his evidence on it. Can you, Mr. McLaughlin, without inconvenience to yourself or those you are acting for, tell us when you will close your evidence.

Mr. *McLaughlin*.—I am afraid I cannot undertake to finish to-morrow night. We have a number of policemen to examine, and there is no harm in remarking that in the examination and cross-examination of the policemen, I will bear in mind the ruling of the Court yesterday with respect to casting blame on any individual. In addition we have a body of testimony with much of which, however, I will not trouble you, as to the feeling of the townspeople on these matters we are inquiring into. I do not think it necessary to produce many more witnesses to prove what in my humble judgment is already sufficiently proved, the offensive character of these drumming parties, and the feeling inspired by them. But there are some persons ready to give evidence of that sort, and which from my point of view has the additional advantage of including proof of some specific outrages referred to in our bill of particulars. I think it my duty to produce those persons for examination, and, of course, cross-examination. There is then another class of evidence, evidence which cannot be given in the absence of the depositions, the product of which has been ordered. Under these circumstances I think it would be holding out a false hope if I said I could finish my evidence to-morrow; but you may depend I shall lose no time.

Mr. Commissioner COFFEY.—Another thing is this. We would be glad counsel would consider if they intend to make observations, whether they will defer doing so until all the evidence is closed. I point this at present to Sergeant Armstrong. We don't want in the slightest degree to dictate the course to be pursued.

Sergeant *Armstrong*.—That was occurring to me—the practice at *nisi prius*—of one speech each after the evidence, but I don't bind myself to it.

Mr. Commissioner COFFEY.—We don't bind you to anything. But we would be glad you considered it.

Sergeant *Armstrong*.—It is not a case for speeches.

Mr. *McLaughlin*.—So I said at the beginning; but there is this ingredient in the case, a mass of documentary evidence, the existence of which I was not aware of at the beginning. I don't see how I could well deal with that, from my point of view, without making some observations, but they won't be many.

Sergeant *Armstrong*.—I would ask with respect to the course of business that the Commissioners would not sit after 4 o'clock to-morrow, and if it is not inconvenient that we should meet at ten in the morning, which will give us six hours good work.

Mr. Commissioner EXHAM.—Very well. We will sit at ten and rise at four.

Adjourned.

FOURTH DAY.

August 19.

FOURTH DAY.

SATURDAY, AUGUST 19, 1871.

Mr. Commissioner EXHAM said—Mr. Barry, there is a matter respecting which we think it right we should make a communication to you, as counsel for Captain Ball. We observed that yesterday you did not, I may say, ask any questions of the witnesses that were produced.

Mr. *Barry*.—Yes.

Mr. Commissioner EXHAM.—But we think it right to call your attention to this. The second branch of the inquiry we are carrying on is for the purpose of reporting to His Excellency with regard to the manner in which the law has been administered in this locality. Well, that involves not only the alleged non-interference with these drumming parties by what are called the local magistrates, but it also, of course while Captain Ball was here, necessarily affects his acts as a stipendiary magistrate—a paid resident magistrate. We therefore, in the course of the inquiry, will be glad to hear from you and Captain Ball any suggestion or any information he can give us with regard to his acts since he came here as a resident paid magistrate, sent here by the Government, with regard to preventing these drummings, either by giving instruction to the police, or afterwards by seeing that those instructions were carried out, or, if they were not carried out, by saying what steps he took to enforce greater efficiency on the part of the police. Now we say that without in the slightest degree prejudging anything; but when we say that we shall expect from the magistrates, through their able counsel, Sergeant Armstrong, an explanation of their conduct, we invite also any explanation that Captain Ball may give, particularly having regard to the fact which we have had given in evidence by several witnesses yesterday—the allegation at all events, by these parties—that these drumming parties have increased very much within the last year and a half or two years.

Mr. *McLaughlin*.—I rather think that five years is much nearer to what the evidence is.

Mr. Commissioner EXHAM.—Some of the witnesses said they had increased since the death of old Lord Ranfurly.

Mr. *McLaughlin*.—Ten years ago.

Mr. Commissioner EXHAM.—A good many of the witnesses, besides, said there had been a still further increase within the last two years.

Mr. *Barry*.—I am very much obliged to you for calling my attention to the fact. My own impression was, as Mr. McLaughlin says, that although the evidence went to show a general increase of drumming parties during some years past, it did not point to such an increase within a short period. I quite recollect the particular statements to which you refer, of the witnesses who spoke of the increase of them since the death of Lord Ranfurly; but feeling that the inquiry may take a turn which may make it necessary for Captain Ball to do something such as you suggest, and to bring some evidence before the Commission on the point, it in fact changes the idea I originally had; for I may tell you that up to a late period of yesterday, I was myself under the impression that I might withdraw altogether from the inquiry, and that it was not necessary for me to watch the proceedings further on his behalf. However, as you think that at a later stage of the Commission it may probably be necessary for me to say something on that point, I shall do so; but I am very much obliged to you for calling my attention to it.

Mr. Commissioner COFFEY.—I may just add, of course, subject to what may hereafter occur, that we are by no means pronouncing a definite opinion at all on the subject; but it strikes me at the present moment that it is perfectly impossible to separate the conduct and acts of Captain Ball from those of the rest of the magistrates.

Mr. *Barry*.—Oh, certainly not with regard to those charges.

Mr. Commissioner COFFEY.—Mr. McLaughlin, an application has been made by a gentleman here whose business requires him to be elsewhere. He is here in obedience to our summons requiring his attendance, and to produce some depositions—Captain Buchanan. It would be a great convenience to allow him to go away as soon as possible, as he has public duties to discharge.

Mr. *McLaughlin*.—I don't want to keep him.

Mr. Commissioner COFFEY.—Do you want anything from him but the production of those documents? I should suppose not.

Mr. *M'Laughlin*.—I don't know of anything else.

Captain *Buchanan*.—What are the particular documents you do require?

Mr. *M'Laughlin*.—Those referred to in the notice sent in by the secretary.

Captain *Buchanan*.—With regard to informations against two parties named Hodgett and Frizelle, there is no record of any such informations in the Crown Office, nor any record in the Crown books of any charge brought against persons of that name. With reference to the others, I have got them here.

Mr. *M'Laughlin*.—I don't know anything about the names. I know that according to my recollection we wanted the depositions with reference to a matter investigated in May, and which was alleged to have taken place on the 29th of April, 1869; and also the depositions with reference to a matter of the 16th June, 1871.

Captain *Buchanan*.—I have got nothing connected with the 29th April, 1869, but all connected with the 16th June, 1871.

Mr. *M'Laughlin*.—Will you kindly tell me this, Captain *Buchanan*. It is a mere formal question, so you need not be sworn. Supposing that the depositions were taken here at petty sessions, and that there was no prosecution, that the parties were not sent forward for trial, where would the depositions be in the ordinary course—with the clerk of the petty sessions?

Captain *Buchanan*.—I presume so, if not sent forward to the Crown.

Mr. *Courtney Newton*.—They were sent forward.

Mr. *M'Laughlin*.—I am speaking of those of 1869. If they were sent forward where should they be?

Captain *Buchanan*.—I presume in the Crown Office. I have the charge of the Crown Office. There is no record in the book of anything done in it, nor are they included in the depositions and documents made up for the assizes that followed.

Mr. *M'Laughlin*.—Is the petty sessions clerk in court?

Captain *Smith*.—We will send for him. I may inform you that informations were forwarded to the law adviser, and that his decision was given on them, which, if the court permits me, I will read.

Mr. Commissioner COFFEY.—Have you the depositions?

Captain *Smith*.—I have not.

Mr. Commissioner EXHAM.—Were they sent back, Mr. *Smith*?

Captain *Smith*.—I am not aware. They did not pass through me.

Mr. *M'Laughlin*.—To whom did that document come?

Captain *Smith*.—There was a case reported on which a copy of the law adviser's opinion was sent back to me.

Mr. Commissioner COFFEY.—Did you send up the original informations?

Captain *Smith*.—I did not. The original informations ought, under the Petty Sessions Act, to be returned within seven days to the clerk of the petty sessions. If they are taken out of petty sessions they must be returned. Whatever magistrate takes them must return them within seven days to the clerk of the petty sessions, and he keeps them until he returns them to the clerk of the peace, if they go further. If they don't go further he ought to have the custody of them.

Mr. *Courtenay Newton*.—I will tell you exactly how the matter stands. Informations were taken in this court-house by Mr. Molony, the resident magistrate. He sent them up to the law adviser of the Crown. Some way or other they were sent to the wrong office, and there was some little confusion in Dublin. Eventually they found their way to the law officer, who gave his opinion, a copy of which was forwarded to the police authorities by him. There was also one sent to Mr.

Molony, which was read out from the bench. That is exactly how the case stands. But it is the Government that are to blame for losing the informations, if lost they are.

Mr. Commissioner COFFEY.—We must only write up to Dublin for them.

Captain *Buchanan*.—If they were sent to the law adviser they were not sent to the Crown Office, for it was only for the sake of getting the law adviser's opinion on them that they were sent. They were not sent to the Crown Office nor to the Peace Office. No informations relating to a party matter are ever sent to the Peace Office.

Mr. *M'Laughlin*.—It occurs to me that Mr. Newton's explanation, for which I am exceedingly obliged, leaves the matter where it was. Nobody can tell anything about the informations, which is what we want to know.

Mr. Commissioner EXHAM.—I believe what very often occurred to them is this. The police sent their report to the head of the Constabulary, and the resident magistrate very frequently, if informations are taken, sends them to the Under Secretary to get the advice of the law adviser.

Mr. *M'Laughlin*.—The peculiar necessity for having these informations that have this mysterious history is this—that we allege that the magistrates, on the hearing of the case to which the informations relate, expressly prevented a question being put which was most vital to the determination of the matter before them. Over and over again we were stopped, owing to that extraordinary absence of the informations. Now, if from what Mr. Newton says, the informations never can be seen——

Mr. *Newton*.—No, no.

Mr. Commissioner COFFEY.—I don't think that follows.

Mr. Commissioner EXHAM.—Mr. Newton says now, that Mr. Molony, the resident magistrate, according to his recollection, sent them. We will have Mr. Molony here.

Captain *Smith*.—Mr. Molony is here.

Mr. *Molony*.—Well, really I had no opportunity of recollecting until Mr. Newton has brought it to my memory. I presume I forwarded them as requested, and got an answer. Whether they were returned to me, and I have them at home or not, I cannot tell you, but I believe they never came back at all.

Mr. Commissioner EXHAM.—I presume you would have sent them to——

Mr. *Molony*.—I sent them to the Under Secretary, who was then Sir Thomas Larcom. It appears that there is a record of the proceedings in the present book of the court of petty sessions.

Mr. Commissioner EXHAM.—Send one of your men for the petty sessions clerk.

Mr. *M'Laughlin*.—As I understand it, Mr. Molony says he cannot tell whether he got them back or not. They may be at home for aught he knows. Is not that so?

Mr. *Molony*.—Yes, it may be so. I have no recollection; it is some years ago now. I frequently sent up things for information.

Mr. *M'Laughlin*.—And got them back again?

Mr. *Molony*.—I suppose so. It is very likely that I put them in the fire, if I did not forward them to say that no proceedings were taken. It is not an information, I presume, when no proceeding are taken on it.

Mr. *M'Laughlin*.—Where are the proceedings now? I suppose you could get them by telegraphing home?

Mr. *Molony*.—I can telegraph to the Under Secretary. I really cannot tell anything about them——

Mr. *M'Laughlin*.—You cannot tell?

Mr. *Molony*.—I cannot tell whether they are at home or not.

Mr. Commissioner COFFEY.—If they are at your home they must be got.

Mr. *Molony*.—If they are at home I can get them. I got very short notice.

FOURTH DAY.
August 19.

Mr. Commissioner COFFEY.—Our being here is for the purpose of investigating this very transaction, and we must have the informations, no matter where they are, unless they have been destroyed or lost.

Mr. *Molony*.—I got my summons after nine o'clock last night, and I had to proceed this morning with very little delay.

Mr. Commissioner COFFEY.—It would have been better to have telegraphed that you would be here an hour later, and in the meantime to have looked for them. It would be rather foolish on our part to have telegraphed up to the Chief Secretary or the Under Secretary for these documents, if instead of being in the Castle they are amongst your papers.

Mr. *Molony*.—Well, I can return by the next train.

Mr. Commissioner COFFEY.—It is only not to have confusion here, if confusion existed in Dublin.

Mr. *Molony*.—I understand you perfectly. I will

proceed by the next train to search, and will telegraph.

Mr. Commissioner COFFEY.—Then we will be able to telegraph that they are not here, and that they must be there.

Sergeant *Armstrong*.—Would it be convenient to hear a list of the informations, so far as they are forthcoming now.

Commissioners EXHAM and COFFEY said they would be very glad.

Sergeant *Armstrong*.—I shall tell you what we have got:—The 20th July, 1865, ten informations; 21st July, 1865, two informations; 16th August, 1865, two informations; 17th August, 1865, five informations; 5th July, 1871, seven informations. Now, Mr. Buchanan, would you have the kindness to take the informations of July last in your hand.

Mr. *Lewis Buchanan* sworn; examined by Sergeant *Armstrong*.

Mr. *Lewis Buchanan*.

2108. I believe you are Deputy Clerk of the Crown?—Yes.

2109. Are you aware whether any bill was sent up founded on those informations?—I can tell you at once. (Refer to book.) There were several sets of informations sent forward; and upon one set of informations relating to an occurrence which took place on the 16th June, a bill was sent forward against parties named Henry Searight, James Searight, Fulton, and John Robinson.

Mr. *M'Laughlin*.—Kindly mention the place.

Witness.—At New Mills; but there were also informations against parties named M'Keever, Alexander, Heard, Attwell, and others; and the Crown in that case did not prosecute, and no bills were sent forward.

2110. Sergeant *Armstrong*.—What was the order of proceeding?—The very moment these informations reached the crown office, copies of them were sent to the Crown Solicitor, who forwarded them to the Attorney-General. That is the course of business. The Crown Solicitor takes the Attorney-General's instructions as to whether he is to prosecute or not.

2111. Who appears to be the magistrate that took these informations?—Mr. Ball; but there were also other informations taken by Mr. Moore Miller, resident magistrate, and the Crown did not prosecute in these either.

Captain *Smith*.—That was from Moy.

Witness.—I was asked to bring the informations relating to the occurrences of the 16th of June, and I brought those relating to Moy as well as those relating to Dungannon.

2112. Mr. Commissioner EXHAM.—These are the ones of last June?—Yes.

(The informations were placed before the Court.)

2113. Mr. Commissioner EXHAM.—Mr. Buchanan, on these informations do you mean to say that the Crown did not prosecute?—The Crown did not prosecute.

2114. Mr. Commissioner COFFEY.—Are you able to say was that by direction of the Attorney-General in Dublin, or on consultation by crown counsel at the assizes?—Well I cannot say positively, but I believe the Attorney-General left it discretionary with the crown counsel at the assizes, because I know there was a consultation on the subject. Indictments were framed on these informations, ready to be sent up, in case that upon consultation they thought it would be advisable to do so. There was a considerable consultation about it, the determination of which was that they did not think it advisable to do so.

Sergeant *Armstrong*.—They saw nothing exceptional in the circumstances.

Mr. Commissioner COFFEY.—It is perfectly plain, Sergeant, on the face of the informations that there were all the materials that were necessary to have the matter investigated, if it was thought advisable to have it done.

Mr. *M'Laughlin*.—What I say is this. It is a matter to be borne in mind, and I think a matter that deserves some notice, that Mr. Buchanan, whose word is to be depended on in the most implicit way, does not pretend that he knows these things of his own knowledge at all.

Witness.—I started by saying so.

Mr. Commissioner COFFEY.—We have this, at all events, as a fact, that as far as the magistrates were concerned in this particular transaction, it is perfectly impossible to suggest anything that is not contained in that information that was necessary to the validity of the charge that was preferred against those persons. I have read the information.

Mr. *M'Laughlin*.—I have not seen them. These are not informations in respect of which I say the magistrates omitted anything.

Mr. Commissioner COFFEY.—No, no.

Mr. Commissioner EXHAM.—These were sworn before Captain Ball; and it is but justice to Captain Ball to state that everything that was necessary to constitute the offence, and to have the individuals identified as far as possible, appears to have been done in the most accurate and proper way. No blame in the world can attach to him.

2115. Sergeant *Armstrong*.—Are these informations in reference to illegal prosecutions at Moy?—Witness.—These are informations that were sent forward at some time in June. The occurrence took place on the 16th of June.

Sergeant *Armstrong*.—I have looked at those informations, and they disclose everything.

2116. Mr. Commissioner COFFEY.—Was there a bill?—Witness.—No bill was sent forward, there was no prosecution.

We all know, each of us having discharged the duties of prosecution and Crown counsel at assizes, that the Crown counsel on consultation may have had very sufficient reasons, independent of the informations altogether, for not sending up bills.

Sergeant *Armstrong*.—Quite so. They might think it would have a healing effect to allow matters to pass for once. I am not reflecting on anyone.

Mr. Commissioner COFFEY.—I know you are not. I am merely saying that for the public information.

Sergeant *Armstrong*.—If there is a complaint to be made about the magistrates not being active, it is a remarkable thing to find their exertions paralyzed by the inactivity of other people.

Witness.—I don't know of my own knowledge with regard to that case. I was present when the Crown counsel were talking about this, and they thought that as nothing had occurred—no assault—

Mr. Commissioner COFFEY.—No actual violence.

Witness.—No actual violence had occurred, they would be emphasizing it too much by having a prosecution. I was present at it.

Mr. Commissioner COFFEY.—That they would be making too much of it.

Witness.—That is what they stated to me.

Mr. Commissioner EXHAM.—Mr. Buchanan, would it not be better, if the Sergeant is going into any of the other cases, that we should first have all the informations in?

Sergeant *Armstrong*.—I have given you a list of them.

Mr. Commissioner COFFEY.—Hand me all the informations.

(Informations were handed to the court.)

Mr. *Reardon*.—Would the Commissioners pardon me for referring to a matter personal to myself. I have been acting as attorney for Captain Ball since the inquiry opened; but last evening it was intimated to me by him that he no longer had any necessity for the services of counsel or attorney. In consequence of a communication I received from Mr. M'Laughlin's client, I interested myself for them last night. From what fell from the Commissioners this morning it appears that Captain Ball will still require the aid of counsel instructed by an attorney. I have conferred with Mr. Newton, who is an experienced member of the profession, I believe, and from what he said, there is no difficulty about my acting for Captain Ball; but I have thought it due to myself and Captain Ball that I should mention the matter to the Commissioners.

Mr. Commissioner EXHAM.—Oh, certainly.

Mr. M'Laughlin.—I will trouble you for the last of the informations.

Mr. Commissioner COFFEY.—That of the 5th July, 1871. (*Handed to counsel.*)

2117. Sergeant *Armstrong*.—Mr. Smith, have you searched among your papers for the informations of 1869?

Sub-Inspector *Smith*.—I have not them at all. I never got the informations.

2118. Sergeant *Armstrong*.—You might have had them.

Sub-Inspector *Smith*.—No. I never took them at all.

2119. Mr. Commissioner EXHAM (to witness).—What became of the informations of the 12th July, 1865? Is there a bill against George Mullen of Dungannon? That would have been in the March assizes of 1866?—At the spring assizes of 1866 the parties against whom informations were sent forward were Crocket and Simpson.

2120. There were two sets of informations, viz., against the Roman Catholic party and the Protestant party, all for the 12th of July. I see George Mullen here, Richard * * *, and others?—These parties were all indicted.

Now, Mr. M'Laughlin, so far as the first one, which appears to have been a transaction of the 12th July, 1865, is concerned, we have some of the informations; but I tell you what appears to have occurred as sworn upon the informations. There was an Orange party of about 2,000; there was a riot in the town; the Orange party were marching with emblems, drums, and fifes; and it appears that eighteen of the Orange party were returned for trial, identified, and tried; and that exactly eighteen of the other party were also identified and tried; and it appears from the crown book that they pleaded guilty at both sides; the whole batch pleaded guilty. The second is—true bills against them all in Nos. 4 and 5; two sets of indictments; eighteen on each side pleaded guilty, and to stand out on their own recognizances, each in £20, with two sureties in £10 each, to appear for judgment on receiving ten days notice, and to be of good behaviour to all Her Majesty's subjects. The same rule was thus put upon the parties on both sides. It is but right to say, that so far as these informations go, it is disclosed clearly that not only were the parties guilty of a riot but also of an unlawful assembly, and a breach of the Party Processions Act, so far as that transaction is concerned. It appears also from the crown book that these proceedings were not confined to Dungannon because there is a true bill against three parties for an unlawful

assembly, and being out joining with a procession with party emblems, and playing of music calculated to provoke animosity in the district of Cookstown; and the three pleaded guilty, and the same rule was made as to them. From the district called Coa there are nineteen of the same Orange party, I presume, because it is for joining in a procession with party emblems and playing music calculated to provoke animosity, and that batch also pleaded guilty, and the same rule was put upon them. Then there appears to have been men that pleaded guilty to assaults connected with these matters too. It appears also, from the crown book, that there were disturbances on the 7th August, 1865, for which a number of parties were sent forward, and they pleaded guilty also, and a like rule was made, namely, that they should stand out on their own recognizances.

Mr. M'Laughlin.—I would like to have the names.

Mr. Commissioner EXHAM.—Patrick Finnegan— [The learned Commissioner also read the names of Ker, M'Keon, Donnelly, Cole, M'Guirk, Kelly, Quin, Arthur, Doherty, Fitzpatrick, Corr, Lohrin, and Denis.]

Mr. M'Laughlin.—We will prove that all these persons are Catholics.

Mr. Commissioner EXHAM.—Well, the indictments appear to be exactly the same, or substantially so. The first count is for a riot; the second count is for an unlawful assembly; and the third count, in the one case, and the fourth, in another, is for an affray.

Mr. M'Laughlin.—That is the celebrated bad indictment that was rectified at the end of thirty years—at least that is the model of it. I believe they use it all over the north-east and north-west circuits.

Mr. Commissioner EXHAM.—It appears from the crown book also that the witnesses in each case, though they are not precisely the same, are all members of the constabulary.

Mr. M'Laughlin.—No doubt of it.

Mr. Commissioner EXHAM.—The head-constable and constables, there are six in each case, and they appear to be nearly all—

Mr. M'Laughlin.—The case I refer to was a one-sided one. It was a case of the 7th August, 1865.

Mr. Commissioner EXHAM.—It appears from the crown book that the first party of eighteen were all of the one party connected with the transaction of the 12th July; and the other party appear to have been of the 7th of August, in the same year; and they happen to be just eighteen and eighteen.

Mr. Commissioner COFFEY.—Now, Mr. M'Laughlin we have gone through these informations. At any time that you wish to see them they are at your disposal.

2121. Mr. M'Laughlin.—Mr. Buchanan, can you give me a list of the Grand Jury at the last assizes.

Mr. Commissioner COFFEY.—That is no part of our inquiry.

Mr. M'Laughlin.—I simply want the list.

Sergeant *Armstrong*.—In what possible view, when no bills were sent up?

Mr. Commissioner EXHAM.—That was what I was just going to ask, for we cannot have the notes unnecessarily loaded with evidence.

Mr. Commissioner COFFEY.—We must know for what object you want it.

Mr. M'Laughlin was understood to decline to state that. (To witness.) Have you the list in Court?

Witness.—Yes.

Mr. M'Laughlin.—I presume there is no objection to its appearing in evidence that I asked for it.

Mr. Commissioner COFFEY.—Not the slightest, nor that we refused to give it. You decline to state for what object you want it.

Mr. M'Laughlin.—Decidedly.

2122. (To witness).—You have made a search for the informations referred to as those of April or May, 1869?—Yes, the 29th April, 1869.

2123. They are not to be had?—Not only did I search in my own office but I went to the governor of the gaol in order to find whether it was possible that it might be a mistake in the office; and I found that no recognizances were ever returned against Hodgett

FOURTH DAY. and Frizelle—no document ever reached the Crown Office in their case.

August 19.

Mr. Lewis
Buchanan.

2124. Turn to the Crown-book for the Spring Assizes of 1867?—I have it here.

2125. Do you see the case of *Regina v. M'Cluskey* and eight others?—Yes.

2126. Read the entry?—"Patrick M'Cluskey and others were indicted, for that they, together with other evil-disposed persons to the number of a hundred or thereabouts, on the 17th day of December, 1866, at Donaghmore in the county of Tyrone did make a riot against the peace; second count, for an unlawful assembly; third count, for being armed with offensive weapons, and assembling in a tumultuous and menacing manner whereby the public peace was endangered. True bill found. All pleaded guilty and were imprisoned for one calendar month with hard labour."

2127. Look to the case of the *Queen v. Reeny*?—Stenson Reeny was indicted, for that he on the 17th September, 1866, did assault James O'Neill, a peace officer, in the execution of his duty as such, and did unlawfully beat, wound, and ill-treat the said James O'Neill. He is charged in a second count with a common assault upon O'Neill. Pled guilty to the indictment, and was sentenced to six calendar months imprisonment with hard labour.

2128. That's the entire of that?—Yes.

I don't know that I will trouble you any further.

2129. Sergeant *Armstrong*.—Have you the informations on which these indictments were grounded?—I have. I have the informations against Stenson Reeny.

2130. Mr. *M'Laughlin*.—I suppose you have those against M'Cluskey?—I don't know whether they are there or not. I did not hear anything about it, or I should have looked; I imagine they are.

Mr. Commissioner COFFEY.—Now, Sergeant, do you wish to ask the witness any other questions?

Sergeant *Armstrong*.—I want nothing further except the informations. Eleven informations touching the matter of Reeny and one about M'Cluskey.

Mr. *M'Laughlin*.—I have a right to get out every entry in the Crown-book. [Mr. M'Laughlin asked for the presence of the petty sessions clerk.]

Mr. Commissioner EXHAM.—We have sent messages for him.

Sub-Inspector *Smith*.—He is in a very delicate state of health. If it is absolutely necessary of course he must come, but the man is scarcely living.

Mr. *M'Laughlin*.—Has he a deputy?

Sub-Inspector *Smith*.—He has. He is very bad at present.

Mr. Commissioner COFFEY.—What is the matter with him?

Sub-Inspector *Smith*.—Decline of life. I will send for him.

Mr. *Buchanan* suggested that Mr. Flanagan should keep the informations.

Mr. Commissioner EXHAM.—We will take care of all you give us. Mr. Flanagan will give him a list.

Mr. *M'Laughlin*.—(Asked for the petty sessions book). I have an entry in the petty sessions book respecting informations of the 5th July relating to an offence described as under the 13th Vic. chap. 2, sec. 2, *query* the 23rd and 24th Vic. chap. 141, sec. 1. The defendant was one of an illegal party who came to Dungannon on the 16th June, 1871, through Perry-street, and the short highway by Carrs'-row, through Well-street to Black Road in the townland of Molanna, accompanied with drums and fifes, and playing music and one party emblem—the words in inverted commas—a blue flag with a man and horse represented in the centre thereof. Some of the party with drums parted at Black Road, and the remainder returned by Dixon's mills to their lodge at Miltown. Bail, in £10 each of themselves, with two sureties in £5 each. I hope I am not transgressing the limits of fair observation by saying that that gives the go-by to the common law altogether.

Mr. Commissioner COFFEY.—It was quite in the power of the Attorney-General, when these informations came before him to direct that an indictment should be sent up for misdemeanour at common law, on an indictment under the Party Processions Act.

Mr. *M'Laughlin*.—Still, having regard to the course of the inquiry, my observation is natural.

Mr. Commissioner COFFEY.—Don't you think the magistrates discharged their duty sufficiently by returning the parties for trial?

Mr. *M'Laughlin*.—I am not giving any opinion at all about it.

Mr. Commissioner COFFEY.—I am giving an opinion on it. I would not expect that they would go into nice and critical distinctions between the common and the statute law on the subject.

Mr. Commissioner EXHAM.—If the magistrates framed the bills, a great many guilty men would get off.

Mr. *M'Laughlin*.—The originality of the notion is that the bench are to blame, for it is no part of my case that they have anything to do with the framing of indictments. Still I think it important to show that the magistrates acted in accordance with the view of the common law laid down by the law adviser.

Sergeant *Armstrong*.—There was no breach of the common law.

Mr. *M'Laughlin* asked for the petty sessions book of June, 1869.

Sergeant *Armstrong*.—Might I take the liberty of suggesting, with a view to something like economy of time, that if these informations are not forthcoming before we begin to trace the history of their loss—

Mr. Commissioner EXHAM.—Let Mr. Molony go home by the half-past twelve train. He can telegraph to us if he has not got them, and then we can telegraph to the Castle if we find that Mr. Molony has not them.

Mr. *M'Laughlin*.—Is there any harm in my seeing the petty sessions book?

Mr. Commissioner EXHAM.—Certainly not.

Mr. Commissioner COFFEY.—I think it highly likely that you are waiting for some witness.

Mr. *M'Laughlin*.—I can only tell you, not meaning to attach undue importance to that imputation, that that is not my intention. Since I came into court until the last moment, I have only been allowed to put three questions to the witness. Sergeant Armstrong and the Commissioners have occupied the entire of the time. I have had my witness ready from the beginning.

Mr. Commissioner COFFEY.—I wish you would produce him there.

Mr. *M'Laughlin*.—I think, with great respect, that that imputation should not be made against me.

Mr. Commissioner COFFEY.—I am making no imputation against you at all, but I am stating what is obvious to every human being. What do we want with this book until we first know whether the informations are forthcoming or not?

Mr. *M'Laughlin*.—I want to see the entry.

Mr. Commissioner COFFEY.—Very well.

Mr. *M'Laughlin*, [having been handed book].—In order to show that my witness has been in court for the last hour—Mr. Heard, you are the gentleman I mean to begin with.

Mr. Inspector *Heard* went to the box.

2131. Mr. *M'Laughlin*.—You were present at the Killyman meeting?—I saw it; I think I described it to you.

2132.—Did you see Mr. Hamilton, the magistrate, there. No, I did not.

That is all I want to ask you.

Sergeant *Armstrong*.—He stated yesterday that he did not see any magistrate there.

Witness.—Every magistrate in court might have been there, and you might have been there, and yet I might not have seen you.

Mr. *Bernard Kelly* sworn ; examined by Mr. *M'Laughlin*.

FOURTH DAY

August 19.

Mr. *Bernard Kelly*.

2133.—At what time did you come into court?—Immediately after ten o'clock.

2134.—Were you in conversation with me an hour ago, when I told you I would produce you first?—Not with you, but with this gentleman.

Mr. Commissioner *COFFEY*.—You have made it worse.

Mr. *M'Laughlin*.—How? Sergeant *Armstrong* and the Commissioners referred to those documents, and when I found that I had lost the attention of the court, I sat down.

Sergeant *Armstrong*.—He did not keep his promise.

Mr. *M'Laughlin*.—It is not of consequence. I don't think re-calling a gentleman for the purpose of asking one question is an examination. This is my first witness.

2135. (To Mr. *Kelly*).—You live in Dungannon?—Yes.

2136. Of what business are you?—A grocer and provision merchant.

2137. I believe you are a Catholic?—Yes.

2138. Do you know where Colonel *Knox* lives?—I do.

2139. Do you remember the night that the band were playing there?—I don't recollect any band playing there.

2140. Do you recollect any band going there?—No. I recollect a drumming party being there.

2141. Oh, I see. You are more correct in your description, by calling it a "drumming" party. When was that?—Immediately after Colonel *Knox* being re-elected for the borough of Dungannon.

2142. Do you know a band called the "town band"?—Yes, I am aware there is such a band in existence; but I am not sure if it was in existence then or not.

2143. Was the drumming party which you saw the town band?—No.

2144. You saw the drumming party?—Yes.

2145. Was it one of the ordinary class of drumming parties that are seen here?—Yes.

2146. And not the town band?—Not the town band that I saw.

2147. Where did you see them first?—At *Ranfurly House*, round a tar-barrel.

2148. *Ranfurly House*, I believe, is close to the road?—Yes, I think so.

2149. Now I may ask you, as I have you here, whether or not you are annoyed by those drumming parties?—I consider them a great annoyance and nuisance.

2150. And dangerous to the public peace?—Yes.

2151. Where do you live?—In *Scotch-street*.

2152. That's the street that leads down from the *Market-square*?—To the railway station.

2153. Did they ever go there at all?—I don't know, except in 1866 or 1865.

Cross-examined by Sergeant *Armstrong*.

2154. How long have you been in business in *Scotch-street*?—About a year and a quarter nearly—a year and two months.

2155. Do you know *Dungannon* very well?—I have been in it for the past twelve years.

2156. When did you see this drumming party?—I don't know the year, but it was immediately after Colonel *Knox* being elected for the borough of *Dungannon*.

2157. Is it a year ago?—It is more than a year ago.

2158. Was it in 1866, 1867, 1868, 1869, or 1870?—It may have been from 1868 to 1870.

2159. It was either in 1868, 1869, or 1870?—Exactly. I think so.

2160. You have a very accurate recollection?—I never attached any importance to the thing at all.

2161. I should think not indeed. What was it that you saw?—I saw a drumming party, and a tar-barrel burning, and a crowd as well.

2162. Do you know whether the town band was in existence at that time or not?—I am not sure.

2163. You don't know. How do you take on yourself to say that it was not the town band that was playing there?—Because I saw it was a drumming party. I did not see any brass instruments at all.

2164. Have the town band drums?—Yes, they may have, and brass instruments as well.

2165. Have the town band fifes and drums?—I suspect so.

2166. Did you ever see them?—Yes, I did.

2167. And heard them performing?—I did.

2168. For the common amusement of the inhabitants?—Yes.

2169. And now, how do you know that it was not the town band that was playing on that occasion?—Because I know the parties that compose the town band, and they are not the parties that I saw.

2170. You know all the parties that compose the town band?—Well, nearly all.

2171. Who is the bandmaster?—A Mr. *Byrne*.

2172. You know him?—Yes, by seeing him.

2173. Was it at Colonel *Knox's*?—I could not say; I cannot say who the individuals were, I was not that close to them.

2174. You cannot say?—Only I know that they were a drumming party.

2175. Don't you know who they were?—They were a drumming party.

2176. Could you not give me the names of the individuals?—I could not.

2177. You know all the town band—could you not tell me if they were the town band or not?—I could tell you that they were not the town band.

2178. How do you know they were not?—They were not there as the town band.

2179. Oh, I see—then was it the town band that was there in some other character?—I could not say.

2180. Was it the town band acting as a drumming party?—I could not say.

2181. You cannot say that?—No.

2182. And there was this parliamentary rejoicing for the success of Colonel *Knox*?—People think it is that.

2183. Were you very much vexed?—Not very much.

2184. Did you care a farthing?—Well, no; I was not much annoyed at it.

2185. Did it create animosity—would you stick any of them if you could get at them?—Certainly not.

2186. Were you very angry?—No.

2187. Were you incensed?—I was not very angry.

2188. Did you become malicious and ill-disposed?—

Mr. Commissioner *COFFEY*.—He says he attached no importance whatever to it. It was not a drumming party. It was just the same as when Mr. *Dowse* was elected; some of his friends got up a tar-barrel and cheered.

2189. Sergeant *Armstrong* (to witness).—Do you like tar-barrels?—I don't know much about them.

2190. Do you like blazes?

2191. Mr. *M'Laughlin*.—When the Sergeant asks you do you like blazes, it reminds me that I should have asked you—and the observation made by one of the Commissioners warrants me in asking you now—do you remember the time Mr. *Dowse* was burned in effigy?—Yes.

2192. Did you see the effigy?—I did not see the effigy.

2193. Did you see or hear anything incidental to it?—Yes.

2194. Was there any firing of shots?—There was.

2195. Did you hear it?—I did.

2196. Whereabouts in the neighbourhood were the shots fired, as far as you know?—On *Windmill Hill*.

2197. Sergeant *Armstrong*.—It was in the same place that the Solicitor-General was burned in effigy?—Yes, I believe so.

2198. Are you fond of shots being fired in that way?—Faith I am not.

2199. Did you conceive that it was a harmless thing, in point of fact?—Far from it.

FOURTH DAY.

August 19.

Mr. Bernard
Kelly.

Mr. Commissioner COFFEY.—Nobody pretends that as far as I am aware of.

2200. Sergeant *Armstrong*.—Had you to run out of the way that night?—I was up in that direction, and the bullets were dropping about through the trees.

2201. Playfully?—I don't know; I left the place as soon as I could.

2202. The bullets were dropping through the trees—whereabouts?—Just at the Windmill Hill.

2203. Coming down the street, did you observe in any way the existence of any bullets?—No; I was not there when the crowd came off the Windmill Hill.

2204. You came home?—I did—left the way.

2205. Wise man—I suppose you hear firing occasionally here?—Sometimes.

2206. Have you been at any window-breaking at all in the way of a spectator—you are not bound to criminate yourself?—

2207. Mr. *McLaughlin*.—If you could be crinated, the Sergeant would do it for you in his cross-examination—do you remember the time that Mr. Hayden's house was wrecked?—Yes.

2208. I should have asked you this on your direct examination. You saw it, I suppose?—Yes, I saw the house afterwards.

2209. Sergeant *Armstrong*.—I should like to know the size of the bullets that were flying through the bushes?—I could not see; it was after night.

2210. Did you catch any of them in your fingers?—No.

2211. About what size were they?—Oh, I could not tell the size; I could not tell whether they were fired out of guns or pistols.

2212. Were you near them at the time?—I was.

2213. How near?—I could not say; perhaps sixty or seventy yards—I could not tell the distance.

2214. You did not go forward and pick up any?—As soon as they commenced firing, I turned off.

2215. Were you ever at a review in the Phoenix Park?—I never was in Dublin.

2216. Did you ever after a review go to look for cartridges that had dropped?—I never was at a review.

2217. Did you go next day to look for bullets?—I forgot about it entirely.

2218. By your oath, do you swear that a single bullet hit a tree that night flying through the trees—will

you pledge your solemn oath that a bullet hit a tree?—They were dropping about the trees.

2219. How do you know?—Because I heard them whistle and drop, and I heard the report of the shots.

2220. What more did you hear?—The shots.

2221. And the bullets?—Yes.

2222. Whistling?—Yes.

2223. And dropping?—Yes.

2224. Dropping—where did they hit a tree if they dropped on the ground?—I could not say, but they dropped about through the trees.

2225. Do you swear that?—Yes.

2226. Did you give the police information?—There was a party with me named *McMullen*—

2227. Did you give the police any information?—No.

2228. Did you complain to any magistrate?—No.

2229. Did you go and tell Captain Ball?—He was not in town then.

2230. Did you tell Captain Ball?—No.

2231. Did you tell no magistrate?—No.

2232. Were you frightened?—The thought never struck me for a moment to tell a magistrate.

2233. How many bullets did you hear?—I could not say how many. There might be five or six perhaps—perhaps more—but I heard more than one. I heard a great many reports of pistol or gun shots. I don't know which.

2234. You don't know whether they were double-barrelled or single?—I don't know.

2235. But you heard the bullets whistling?—Exactly.

2236. I suppose you heard sparrow hail?—I heard no hail.

2237. You are sure you did not?—I did not.

2238. Or swan shot?—I don't know anything about that.

2239. Or No. 1? Do you know what shot No. 1 is?—I do not.

2240. You are not accustomed to firearms?—Never fired out of any sort of a weapon except once.

2241. I hope it did not kick and knock you down?—It did not.

2242. Mr. *McLaughlin*.—Did you think this firing a good joke?—I considered it very serious at the time for I considered that life was endangered.

Examination of witness ended.

Mr. James
McElhone.

Mr. *James McElhone* sworn; examined by Mr. *McLaughlin*.

2243. Do you remember the night of the drumming at Colonel Knox's place?—I do.

2244. Do you know the town band?—I do.

2245. What sort of instruments have the town band?—Brass.

2246. Have they fifes and drums?—They have one fife at least, as far as I know.

2247. A piccolo?—Yes.

2248. I suppose you would know the difference between the town band and a drumming party?—Clearly.

2249. More civilized music?—

Mr. Commissioner COFFEY.—Some attempt at music.

2250. Mr. *McLaughlin* (to witness).—That night where did you see the drumming party?—I first saw them on the road opposite to the Earl of Ranfurly's gate. They were round a tar-barrel.

2251. Are you able to say whether or not it was the town band or a drumming party?—I believe the town band was not in existence then.

2252. That's your way of saying that they were not the town band?—I have no difficulty at all in swearing that they were not the town band.

2253. Can you tell me any of the persons who were in it?—There was one noted character that I knew very well.

2254. Who was that noted character?—Of the name of *McReynolds*.

2255. Do you know the man?—And they know him very well in Omagh.

2256. Do you know a man named Bennett?—I know a Catholic of the name of Bennett.

2257. He may be a Catholic, and a man too?—I thought you referred to the other side.

2258. Not at all; you may trust me?—You see I tell the truth.

2259. Would you know the members of the town band, when they were in existence, when you saw them?—I would.

2260. These were not the town band that were there?—There may have been persons there that are now in the town band. I believe there were, too; but they were not there in their official—

2261. Were they the only persons there?—Oh, there was a large crowd there—women.

2262. Plenty of drums?—Yes.

2263. And any quantity of salt, pepper, and mustard?—Party expressions, too, were used.

2264. They don't cost much; you heard the party expressions?—I did.

2265. What were they?—There was a gentleman here at that time, contesting the borough, but who retired before the nomination day, named Lewis, and they were crying to hell with him, and to hell with the Pope. The Pope was a secondary personage, Mr. Lewis came first, and he afterwards.

2266. I thought the Pope was the primary personage?—No.

2267. Well, a secondary personage?—Yes.

2268. At what season of the year was this?—It was in 1868.

2269. At what time of the year; was it in the hot season?—I think it was in November.

2270. Was it the short, simple, pious, Christian sentiment, "To hell with the Pope?"—Yes.

2271. Was it "To hell with the Pope," simply?—Yes, and the other affair too.

2272. Was that the way they expressed that pious aphorism?—Yes.

2273. Or was it "Till hell with the Pope?"—Oh, no, they spoke quite plain. It was *to* hell.

2274. Was there any great difficulty in hearing this; were they talking in a whisper?—Oh, no, they don't use that expression that way.

2275. They don't say their prayers in that modified tone. Was it after or before that that they went up in this harmonious inoffensive way to Colonel Knox's house?—They then turned in through the gate, and they brought in the tar barrel with them, and they deposited it on the—— I don't know for I was not farther in.

2276. Only say what you saw and heard yourself?—They went before the house and put the tar barrel opposite the house.

2277. That you saw?—Yes, I went inside the gate after them, and a shower of gravel was thrown at me and a young man named Kelly, the last witness——

Mr. Commissioner COFFEY.—They did not want your company.

2278. Mr. *McLaughlin*.—I think you mentioned that Mr. Lewis, for the purpose of giving him a warm locality, was dealt with first?—He was.

2279. Very well. Now, do you know a man here named Dixon?—Yes.

2280. Do you know whether anything was said about Dixon at all?—No, I did not hear anything about Mr. Dixon.

2281. I suppose you were persuaded by the shower of gravel to come away?—No, I did not come away just then.

2282. Did you not?—No.

2283. Did you hear the beating of drums after they had gone on the lawn?—Yes, they went to the lawn and commenced to play the fifes and beat the drums, and had some sort of dance round the tar barrel.

2284. A war dance?—Yes.

2285. Like Indian savages?—Yes.

2286. Round the tar barrel? Very well. I suppose you would regard—what would you call that fellow *McReynolds*?—Yes.

2287. He was the "Man Friday" of the party?—Yes.

Cross-examined by Sergeant *Armstrong*.

2288. You are the gentleman who is known by the name of "Funny Jemmy"?—That's the first time I heard it.

2289. It is? Then you don't know what is said of you. You are looked on as quite a wit. Do you recollect the time Mr. Dowse was returned for Derry?—I do.

2290. Were you glad of that?—I did not care a twopenny ticket.

2291. Are you in earnest?—I don't believe in English legislation for Ireland at all.

2292. Mr. *McLaughlin*.—You are a "Home Ruler"?—No.

2293. Sergeant *Armstrong*.—We must get you returned to Parliament. It is the only place where "Home Rule" can be useful to the country—what do you think?—No.

2294. Did you go down to see the tar barrel burned for Mr. Dowse's success?—Well, I think I have a right to go where I like. My father was then, and is now, a cesspayer; and therefore I had a right to go where I liked.

2295. Did you go down to see the tar barrel burned for Dowse?—I went to see what was up.

2296. "What was up?" That was very significant for "Funny Jemmy." You went to see "what was up"?—Yes, I always like to see a scene.

2297. Every funny fellow likes that. Well now, did you not go down to see the tar barrel for Dowse?—For Dowse?

2298. The tar barrel?—All I had to do was to go to my own door and look down the street at it.

2299. I want to know did you go to look at it?—I did.

2300. Did you go to your own door?—Yes, I did.

2301. Did you go down to where the——?—Where the tar barrel was? I did.

2302. What did you see when you stood at your door?—You asked me did I go and see it. If I only intended to see it I could have seen it from my own door.

2303. But you went down?—Of course I did, to see what was going on.

2304. And they were shouting "to hell with Knox"?—I did not hear that the whole night—not in Irish-street.

2305. Or Market-square?—I was not in Market-square.

2306. You say you did not hear it in Irish-street—where did you hear it?—I was not in Market-square that night.

2307. Mr. Commissioner COFFEY.—Did you hear it at all?—I did not hear it the whole night.

2308. Sergeant *Armstrong*.—Not that night?—No, I did not.

2309. What were they saying?—They were calling "three cheers for Dowse," and "hurrah for Dowse," and that sort of thing.

2310. And "down with" whom?—Down with Gladstone.

2311. And I suppose they did not forget King William?—And I thought it very inconsistent that they should be hurraing for Dowse and crying "down with Gladstone."

2312. Did they cry to hell with King William?—No, not that I know of.

2313. You were not frightened when you went down to the tar barrel?—I was not among good company I thought.

2314. You were among the burners there?—Yes.

2315. You took a share in it?—I did not.

2316. You helped them?—I was a spectator.

2317. Did you aid and abet it by your appearance—I believe you are a man of great influence in the town?—No, I have no influence at all.

2318. Havn't you large influence?—No.

2319. Do you think that influence could be exerted to persuade those fellows not to be burning tar barrels?—No.

2320. Why?—Because I would not exercise it even if I had it.

2321. Why not?—Let everybody do as they like just.

2322. You never interfered?—No, I just looked on.

2323. Did you consider that they were doing an unlawful act?—I did not.

2324. Therefore you did not report it to the police?—I have no connexion whatever with the police. I would scorn to become an informer to the police.

2325. I suppose you are of opinion that there may be a political demonstration of that sort in the way of rejoicing for a successful candidate, do you think so?—I don't understand.

2326. Do you think it any harm for people to rejoice for a successful candidate?—I think it no harm; not the least.

2327. And to burn a tar barrel?—No, I think not; that is, when it is not associated with a party object.

2328. Was the burning of the tar-barrel for Dowse's success associated with any party object?—I mean to say that it was a tar-barrel burned in honour of the success of Dowse, and not to give offence to the Protestants of the town—that is what I mean. It was burned to show the feeling of the Catholic people at the success of Dowse, and not to insult the Protestant people of the town.

2329. To show the feeling of the Catholics?—Exactly.

2330. It was a Catholic movement?—He was a

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Mr. James
McElhone.

FOURTH DAY. Liberal Protestant, so that anything that the Catholics could do gave no offence.

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Mr. James
M'Elhone.

2331. Is that your view—that anything that Catholics did in the way of burning a tar-barrel could not give offence?—Except the other side was so ignorant as to take it up as an offence.

2332. Don't you say the Catholics are so ignorant as to take up the drumming?—Sir?

2333. Does the drumming offend you?—It does not offend me in the least.

2334. It never offended you?—No, it did not.

2335. Or hurt your feelings?—Never.

2336. You would rattle away and let them do the same?—I would not rattle at all, because I could not beat a drum.

2337. May I ask what is your business, you appear to be a most intelligent man?—My father is a leather merchant and spirit dealer, and I manage his business for him.

2338. Was it out on the road that these fellows lit the tar-barrel the night Colonel Knox was returned?—It was on the evening of the day he had unfortunately a walk over here.

2339. And then they lit the tar-barrel on the road?—Yes. I believe it was lighted to give offence to the Catholic people, and not to celebrate Colonel Knox's return, because I don't believe the Orangemen care much about Colonel Knox.

2340. What did they go there for?—Because he was very parsimonious to them. They were all complaining that he did not stand liquor, or something of that sort.

2341. Is he losing his popularity amongst them?—They said he was very parsimonious, and that he did not stand.

2342. Now I ask you do you think that on the night of an election it would tend to improve the quiet of the town if Colonel Knox made all the low Orangemen drunk?—It would not; but there is a medium. He did not reach the medium. It was quite a nig-gardly affair altogether.

2343. You are "Funny Jemmy;" does your father sell whiskey or not?—He does. He is a retail pub-
lican.

2344. Colonel Knox is no use at all at election times, because he did not make them all drunk—do not you think that is a sufficient violation of his duty as a magistrate?—Sir?

2345. That he did not make them all drunk?—As I said before, there is a medium—a half way between about, and Colonel Knox did not even reach that.

2346. When you got the shower of gravel what did you do?—I got a little afraid.

2347. That is what you felt—you felt fear; but what did you do; did you get behind a tree?—No; I thought it was very cowardly conduct.

2348. Did you get behind a tree?—There were no trees there; there was a wall on one side and a wall on the other.

2349. What did you do when you got the shower of gravel?—I looked round me quietly.

2350. Were you hurt?—No.

2351. You did not go away?—No, I stopped there fifteen minutes afterwards.

2352. What took you there at all?—Curiosity.

2353. To see what was going on?—To see what was up.

2354. Were you offended?—Not in the least.

2355. Nor vexed?—No.

2356. You thought it was fair enough on the evening of an election?—Well, my impression was, that that exhibition was got up solely to offend any Catholics that might be passing at the time, for I knew in my heart that they did not look on the success of Colonel Knox in any light at all—they did not regard it as of any importance whether he was in or out of parliament, because parliament is of no use.

2357. Any that might chance to be passing?—Sir?

2358. You and your friend Kelly went down for the purpose?—For the purpose?

2359. Yes, you went to see what was going on?—We generally took a walk down that way.

2360. Didn't you go down out of curiosity to see what was going on?—Yes, to see what was going on.

2361. Or to see the fun?—Exactly.

2362. Funny Jemmy—still all for fun; and then the trees breaking warned you I suppose?—Yes.

2363. What tunes were they playing?—Well, I'll tell you now when you refresh my memory. I heard the same M'Reynolds call out to them to strike up the "Orange boys of Tamnaghmore."

2364. What's the name of that tune?—The Orange boys "of," or "at" Tamnaghmore.

2365. I am sure it is a fine strain—did they play it?—I could not tell the air at all.

2366. How many fifes had they?—I could not say.

2367. Had they a fife at all?—They had certainly one fife at least. One at least; and there may have been more.

2368. You did not observe more?—I did not.

2369. Was he a great performer?—Miserable.

2370. I hope you gave Kelly a treat after all was over—you had a glass of punch together?—No, we had not.

2371. What did you take?—We went quietly home.

2372. Quietly; but what did you take when you got home?—I took my supper.

I will take the liberty of re-christening you, let your name for evermore be Funny Jemmy.

Re-examined by Mr. *M'Laughlin*.

2373. You will be known by that name hereafter, christened by the Right Rev. Dr. Armstrong, D.D. Now, Colonel Knox, that you have been cross-examined at such length about is member for the borough here?—Yes.

2374. You have accused some Orangemen of not being very fond of him; what do you mean by that?—I believe they are not.

2375. Why should not they if he goes a great way for them?—He does, but in many matters he does not.

2376. You have been asked your business, and whether your father does not sell whiskey?—Yes.

2377. Now it has been alleged that you would have supplied the drink if the Colonel had stood "Sam," to use the diplomatic phrase?—Not in the least degree.

2378. It is more likely that he would get it from Mr. Lyle?—You would get it 25 per cent. over proof from him.

2379. Don't you think that he would throw his custom in the way of a friend?—It is likely that he would.

Mr. William
Gettings.

Mr. *William Gettings* sworn; examined by Mr. *M'Laughlin*.

2380. What is your business?—I am a carpenter.

2381. Where do you live in the town?—In Perry-street now.

2382. Down below Church-street?—Yes.

2383. I suppose you hear those drumming parties from time to time?—I do.

2384. I suppose you have the same opinion that everybody else has about them?—Well, I don't know what other persons opinions are.

2385. What is your opinion—are they dangerous to the public peace or not?—They are very irritating.

2386. And I suppose, in consequence, dangerous and calculated to excite turbulence?—Well, I have seen a likelihood of breaches of the peace but for advice given to the parties.

2387. Have you ever seen any actual wrecking or anything of that sort consequent on those drumming parties?—Well, I did, but it is a good while ago.

2388. How long ago?—I think it was in the July of 1865.

2389. Do you know of any persons leaving their houses and going to the rere of them to escape the stones?—Well, I lived in George's-street at that time, and when the mob came on, my sister's children were in the house with me. She had sent them down from her place to mine for protection, believing it would be quieter.

2390. Where do you live?—At Scotch-street, in Shamble-lane, where the row occurred on that same morning.

2391. Near Mr. Hayden's house?—It is at the opposite side of the lane in Scotch-street.

2392. Had you any children of your own?—I had not. I have one now. I had none then, nor was I married.

2393. You had then another house?—Yes, in George's-street.

2394. Did anything happen?—There was an occurrence in the morning, and when I heard in the course of the day that the town would be wrecked, I stopped about the town all day, and my sister sent her children down to my house.

2395. You mean that you did not go to your work?—I did not.

2396. But for that would you have gone to your work?—Certainly. When I heard the drumming party I closed the grocer's shop I had then, and stood at the door. I saw them turn round into George's-street, and then I sent the children, my sister, and other parties in the house to the rere, and stood at the door myself, until the ranks of the police were broken, and the row commenced, and then I stood inside, and I do not know what passed.

2397. Until the ranks of the police were broken?—Yes.

2398. Did you see that?—I did.

2399. By whom were the ranks of the police broken?—It was by the mob coming up—they that were drumming; and they were a very forcible, fierce-looking mob.

2400. They were drumming?—They were.

2401. That was an Orange mob, or party, I should say, for "mob" is an ugly word?—Yes, they were.

2402. How many of the police were there?—Well, they were two deep across the whole street, and the width of it is opposite the court-house, with charged bayonets. The mob forced in on them with weapons, and bludgeoned them till they broke. They smashed one of them down, and it was in the act of the wounded policeman being carried away that the ranks were broken.

2403. That you saw yourself?—I did.

2404. Having regard to the consequences arising from drumming, is it your opinion that it is a laughing matter?—No; any man that saw it as I saw it, would not believe it to be a laughing matter.

2405. Is it your opinion that these drumming parties are a good joke?—

Mr. Commissioner COFFEY.—I declare nobody is making it a joke except your own witness on the table. He provoked all the laughter.

Mr. *McLaughlin*.—Did the cross-examining counsel assist him at all?

Mr. Commissioner COFFEY.—I defy anybody to avoid laughing.

Mr. Commissioner EXHAM.—I must say that Sergeant Armstrong, on the first day, so far from making a joke of it, deprecated it in the strongest manner.

Mr. *McLaughlin*.—I do not say that he did not; but there are other parties.

Mr. Commissioner COFFEY.—You provoke as much laughter yourself.

Mr. *McLaughlin*.—It is voluntary.

Sergeant Armstrong.—It is the common right of all subjects to laugh.

Mr. *McLaughlin*.—Certainly, on proper occasions.

2406. To witness.—Did you see Mr. Hayden's house that night?—I saw it that evening.

2407. I believe it was pretty well smashed?—Yes. FOURTH DAY.

2408. I believe you repaired it in your professional capacity?—I did. August 19.

2409. What age are you?—I am above forty-five. Mr. William

2410. And you know the locality well?—I should know it. Gettings.

2411. Do you think it would be possible for energetic magistrates and authorities thoroughly in earnest to put down these drumming parties?—I do.

2412. You don't agree with the views of those who describe the Orange party as utterly beyond the reach of argument, or think that they would not listen to the persuasion of influential men among them?—Yes, I think they would. Of course there are fellows of all parties that will listen to nobody; but there are parties to be got at who will listen to reason and common sense, if it was discountenanced even.

2413. What do you mean by "discountenanced even"?—Well, I must explain that. I have seen drumming parties in the town, and drumming parties in the country, and there is as much difference between them as there is between an amateur band and an Orange drumming party. I am fond of music myself, and would listen to an amateur band, I don't care what parties it was composed of, on the roads and in country places, where they play music not violently; but in the town of Dungannon it is not music—it is thrashing of drums.

2414. Don't you think that thrashing of drums is preferable to thrashing of men, women, and houses?—Well, I suppose it is.

2415. As I gather from you, no two things are more unlike than an amateur band and a drumming party as understood in Dungannon?—No.

2416. Is it your opinion that they are not discountenanced as they ought to be?—

Sergeant Armstrong.—Let him state any facts within his knowledge. I object to his opinion.

Cross-examined by Sergeant Armstrong.

2417. You appear to like music played in the country?—I like it in the town also.

2418. Ay, if it is music?—Yes.

2419. Who is it that you are in the habit of being so much pleased with in the country—what sort of bands?—Well, I have met what I believed to be an Orange party in the evening, in the country, with fifes and drums; but there would be two fifes and one drum—a large drum and a small one.

2420. And you liked that?—Well, I did not see any offence in it, because they were not playing party tunes, and there was no party display.

2421. They were enjoying themselves?—They were.

2422. Is that a very common thing round Dungannon?—Well, I only met it once or twice.

2423. They were playing innocent tunes?—They were not party tunes.

2424. And the music was rather agreeable to you?—Well, it was.

2425. Because the noise was not too great?—It was not.

2426. Whereas in the town they make an awful noise with the drums?—I wish you heard them, Sergeant.

2427. And the sound of the fife is quite drowned by the noise of the drums?—You might hear it in passing your door, but that would not be long.

2428. As you say, it is thrashing?—Thrashing—nothing else.

2429. And it appears to be done for the purpose of annoyance?—The vindictive spirit in which it is done shows that.

2430. Would you tell me, as you think this drumming through the town could be put a stop to, as a sensible man, how you would do it?—Well, I never considered it.

2431. But you see, there's the point—as a practical man—there is a great difficulty in doing it?—Well, I

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would leave it to the parties that make it their profession.

2432. To those whom it most concerns?—Yes.

2433. Is there in the town of Dungannon what you would call a mob on each side, as there is in most towns, of young loose fellows, hard to manage?—Oh, I dare say there is, because I have seen where they would come to an opposite party, not the loose characters, but everyone in the street would go to their respective party, and the cheering and groaning was likely to lead to a breach of the peace, and but for the police being there, there would have been.

2434. Now, have you observed on many occasions the police active in doing all they could to prevent mischief?—No.

2435. Did you ever see them on such occasions?—I never saw them doing anything but marching after them.

2436. Did not you see them?—Well, they stood there between them.

2437. What do you think they ought to have done?—Well, I think that where there would be a leader leading them on, and cheering or groaning they could make an effort to take that person, no matter what side he belonged to; because without leaders a mob would not—

2438. What occasion was this that you referred to?

—Well, I have seen them several times in Perry-street.

2439. Fix me any date?—No, I could not.

2440. No date at all?—No, because it is of frequent occurrence, and I never fixed a date.

2441. Was it on the 12th July or any extraordinary occasion?—They go out of town of an evening and come in at night; and it would be on the occasion of their coming in.

2442. Was it on a 12th of July or at some other time?—It was at other times.

2443. Did you ever see these two mobs attacking one another at night and coming to blows?—Well no, because I was compelled to keep in my own house if I heard drumming at a distance.

2444. We have heard of Mr. Hayden's house being wrecked, so after that I would like to know what it cost to put it in repair; could you give us an idea of the extent of the mischief and what you got for putting it in repair?—I could not give it to you from memory it is so long since, but he put in new sashes in a whole story of the house.

2445. Did he get the expense off the county?—No, he did not.

2446. What did it cost?—I could not give a guess.

2447. Did you make the house a great deal better than it was?—Certainly, for the new windows put in would be in better style.

2448. Modernizing them?—Yes.

2449. Large plate glass?—No, common glass.

2450. Making them a still better description of window?—They are.

2451. What did it cost?—I don't know how many windows are in the house. I suppose they cost £1 a window. I don't know what damage was done inside; I only repaired the sashes.

2452. And you can't tell me how you would put down the drumming parties?

Mr. Commissioner COFFEY.—I think he told you it could be very effectually done by meeting the crowds at the corners of the streets.

2453. Sergeant *Armstrong* (to witness).—And then you would get the police to take them up?—And I believe that if these party cases went to the town magistrates along with the resident magistrate they would be put down more effectually, because as I remarked, in the country the drumming is not so offensive, and the country magistrates who attend the bench here, do not think it offensive, because they cannot understand it.

2454. And your plan would be to leave those cases to the town magistrates with the resident magistrate?—Yes.

2455. Who would understand it better?—They would.

2456. Do you know that the police did make arrests at night of those fellows?—Well, I don't know. I believe they did—that they did once or twice.

2457. Don't you know very well that they have been generally active in town and that they have arrested those fellows and got them laid up for twenty-four hours on some occasions?—I do not remember any case.

2458. Did you ever attend the sessions?—No, I did not.

2459. You have heard that all that were sent on for trial in 1865 from the 12th of July row, twenty on one side and eight on the other, were all turned home again from the assizes the same night?—It was very nicely done.

2460. Did that promote the peace of the town?—No, it did not; but it was very nicely done.

2461. Do you think the magistrates were to blame for that?—Well, I don't believe they were.

Re-examined by Mr. *McLaughlin*.

2462. When you say it was very nicely done, will you tell us what you mean by that?—Well, the riotous party.

2463. Sergeant *Armstrong*.—I am told you know something; were you out through the town on the 12th July, 1865—the time that all these men were sent for trial?—I was.

2464. Did you see the magistrates active through the town?—There were one or two magistrates. There were, I believe, the resident magistrate for the county and the local magistrate; they were present when the crowd broke through the police.

2465. Who was the local magistrate?—I believe it was Mr. Brooks who was here at that time.

2466. Who was the resident magistrate?—It was the stipendiary for the county.

2467. Who was the other magistrate?—I don't know.

2468. It was not the resident magistrate?—I believe Mr. Brooks was here at that time.

2469. Was he the resident magistrate?—I mean by "resident" the magistrate that belonged to the town.

2470. Who was the stipendiary?—I think it was Mr. Coulson.

2471. Did you see other magistrates through the town?—I did.

2472. Did you see Colonel Knox through the town that day?—Well I could not tax my memory.

2473. Mr. *McLaughlin*.—You used the expression "nicely done." Give some explanation of what that means?

Mr. Commissioner COFFEY.—About those that pleaded guilty at the assizes?

Witness.—Well, there were parties made amenable for the wrecking; and in some time afterwards I think it was—after these things pass I don't bear them in mind—the same party created a row in the morning and came into town for their instruments that were detained in town. They passed the door of the house that I lived in in a violent and threatening manner, firing shots and doing such things. They created a second party from the locality of Irish-street which assembled here at the corner. The police interfered there and they were divided. One party went one road firing shots; the other party kept at the upper end of the town. They kept there hurraing; and the magistrates and police hearing that they were going to come round by another way went that way to meet them. The Catholics did not separate but kept in Irish-street all night; and they were made amenable for stopping in the street all night.

2474. That was on the 7th of August?—Yes, and immediately afterwards both parties were sent to the assizes.

2475. Were any of the Protestant party made amenable with reference to the transaction of the 7th of August?—Well, I could not say.

2476. You were asked by the Sergeant whether or

not you, who, it has been sworn, assisted to make up Mr. Hayden's house again, knew whether he got compensation; and I think you were proceeding to say that you were at the Omagh assizes?—I was at the Omagh assizes, and nothing was allowed but in two cases, and his was not one of them.

2477. I believe Mr. Hughes applied?—Yes, Mr. Hayden applied, and so did Mr. Hughes, for damages, at the assizes.

Sergeant *Armstrong*.—That must have been in writing?

2478. Mr. *M'Laughlin* (to witness).—Who opposed them?

Sergeant *Armstrong*.—Don't answer that.

Mr. Commissioner EXHAM.—It is no part of our inquiry.

Mr. *M'Laughlin*.—I would respectfully remind the Commissioners that this was not a matter of my introduction.

Mr. Commissioner COFFEY.—It was not.

Sergeant *Armstrong*.—If we want to know the amount claimed produce any writing on the subject. A claim on the county must have been preceded by an affidavit. Show the affidavit.

Mr. Commissioner COFFEY.—You can get from Mr. Hayden, whom I presume you intend to examine, what damage was done to his house.

Mr. *M'Laughlin*.—Would it not be important to show that he was opposed at the assizes on a technical point by the Orange party, and so prevented from succeeding?

Mr. Commissioner COFFEY.—I don't think it would be of the slightest importance in the world, for this reason, that it is no part of our inquiry; and it is our duty to prevent you from going into anything except what is absolutely the subject of this inquiry.

Mr. *M'Laughlin*.—If I may say so, I entirely agree to what Mr. Commissioner Coffey has said, subject to this limitation, that the fact that he was prevented from getting compensation in such a discreditable way would be an additional illustration.

Mr. Commissioner COFFEY.—You have sufficiently established that this man's house was injured more or less. It depends on further evidence to show that he got no compensation, though he applied for it.

2479. Mr. Commissioner EXHAM (to witness).—I want to ask you one word. With reference to that matter of 1865 were there additional police sent here at that time do you know?—There were.

2480. We have it already that there was no resident magistrate here, that is, permanently in Dungannon?—Oh, the regular stipendiary of the county was.

2481. Exactly; Mr. Coulson was here at that time?—Yes.

2482. Was he in charge of the police?—Well, I could not say who was in charge, but I believe that he and Mr. Brook were in the street with the police when they were broken through.

2483. And he saw what happened then, of course?—Yes.

2484. With regard to the leaders of these drumming parties, are the leaders townspeople of Dungannon?—Well, yes they are. I know men of the town of Dungannon that take a leading part in going with these processions.

2485. And are constantly going with them?—Oh, not constantly, but I see them occasionally.

2486. What I mean is, is there anyone who is looked on as the recognised leader of the others, and who is usually out giving directions?—Oh I don't know that there is.

2487. You say that they usually go out in the evening and come back; is it dark generally when they come back?—Yes, it is; and at that time of the night it is alarming. If I heard drumming at a distance while I would be about the town I would be sure to make home, because the people would be alarmed about the house. When I was not there they had to take refuge.

2488. On occasions when you have seen them coming home have you always seen the police somewhere in the street?—There would be one or two police after them.

2489. In what numbers would they be (as a general rule), according to your experience?—Well, from fifty to two hundred on an average.

2490. Grown persons—men amongst them?—Oh, yes.

Examination of witness ends.

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The Very Rev. *Felix Slane* sworn; examined by Mr. *M'Laughlin*.

Very Rev.
Felix Slane.

2491. Dr. Slane, I believe you are a Catholic priest?—Yes.

2492. And priest of the parish in which Dungannon is situated?—Yes.

2493. I believe you are Dean of the diocese of Armagh?—Yes. We may admit it now, I believe.

2494. Have you been long parish priest of Dungannon?—Something beyond twenty-three years.

2495. You know of these drumming parties?—Yes.

2496. Do you conceive them to be offensive to Catholics?—Certainly I do. I know them to be offensive.

2497. And you speak including yourself?—I do.

2498. In your opinion are they dangerous to the public peace?—Well, I should think so. From the changes that come on men's minds they might at one time pass away quietly; at another time men might not be so well disposed for peace, and they might create a row.

2499. Do you think that the public peace would be rendered more secure by their being put down?—I go so far as to say, it is my opinion that so long as these things are going on in the manner they are, we will never have sincere peace, nor charity, nor good-will existing among our people.

2500. Have you occasionally been annoyed in the neighbourhood of your own house by those drums?—Well, we hear the drumming according to the different ways in which they come in. Sometimes they come down, but very seldom, from the road that leads from

the poorhouse to Ranfurly-terrace. At other times they appear to come from what we call the Bush road; and at other times from a branch of the same road, which we call the Killyman-road.

2501. You have the misfortune to live at a corner where these roads converge?—Yes, very nearly. The chapel is just in the corner, and my house is only a few perches from it.

Sergeant *Armstrong*.—Might I suggest to my learned friend, with a view to regularity, that he should go on and exhaust his examination.

Mr. *M'Laughlin*.—I have.

Sergeant *Armstrong*.—Don't say that while you have anything else to ask.

Mr. *M'Laughlin*.—I am in the recollection of the Commissioners.

Sergeant *Armstrong*.—You have several times introduced new subjects on re-examination.

Mr. Commissioner COFFEY.—Well, only once, I think.

Sergeant *Armstrong*.—It is only for the sake of regularity—

Mr. *M'Laughlin*.—For the sake of justifying myself—

Sergeant *Armstrong*.—There is no justification; that gentleman may be half an hour under re-examination.

Mr. *M'Laughlin*.—No doubt; but the Sergeant involuntarily overlooks this.

Sergeant *Armstrong*.—Is there anything else that you would like to ask?

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Mr. Commissioner COFFEY.—Let us hear what he has to say.

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Very Rev.
Felix Slane.

Sergeant *Armstrong*.—I am not finding fault.
Mr. Commissioner COFFEY.—You have a pleasant way of stating it, but still it is finding fault. Let us hear what he has to say.

Mr. *M'Laughlin*.—What I have to say is, that I simply and respectfully deny the fact. It is very true that this morning I did re-examine a witness as to a number of matters naturally connected with the direct examination. Before I put one of the questions I apologized to the Court, and mentioned a thing, which in strictness I had no right to do. And now, in this

fourth day of the inquiry, it is the only solitary instance in which that occurred. Not only have I done that, but I have been careful on every occasion on which I re-examined, to expressly put my finger, so to speak, on the very question of the Sergeant that gave me the right to re-examine. I can do nothing nearer than that.

Sergeant *Armstrong*.—I assure my friend that I don't presume to lecture him, or even to criticize him. [Addressing the witness]. Allow me, sir, to take the liberty of saying, that entirely concurring in your admirably expressed sentiments, I don't ask you any question whatever.

Not cross-examined.

Mr. John
Hayden.

Mr. John Hayden sworn; examined by Mr. *M'Laughlin*.

2502. You are resident in Dungannon?—Yes.

2503. You are in business here?—I am.

2504. What is your business?—I am a grocer, retail spirit dealer, and general provision merchant.

2505. I believe, without pressing yourself to say too much, you may say that you are in a large way of business?—Well, considerable.

2506. Have you any house property in Dungannon?—A little.

2507. How long have you been resident here?—Nearly eighteen years.

2508. Where did you come from originally?—I was born within four miles of Dungannon.

2509. In point of fact you belong to the neighbourhood. You are the gentleman whose house was wrecked in 1865?—Yes, amongst others.

2510. Was it only the breaking of a few panes, or was it a thorough, sincere, and unaffected wrecking it got?—It got a very fair riddling.

2511. The woodwork of the windows was carried away as well as the glass?—Yes, a good many of them.

2512. We have already heard that you applied for compensation and did not get it, being opposed?—That is so.

2513. With regard to these drumming parties, what is your opinion as to their offensiveness to you and your co-religionists?—There can be no doubt of it.

2514. I will not take the liberty of doubting it. Do you agree with the host of testimony we have had as to their dangerous character with reference to the public peace?—I do. In almost every instance they are calculated to create breaches of the peace; and in every case they lead to bad feeling and animosity, even when they don't lead to breaches of the peace.

2515. I believe you are one of those who took a prominent part in repressing the tendency to opposing demonstrations on the part of your co-religionists?—Always; but I say that but for the influence of others having more influence than I had, no doubt, there would have been bloodshed on several occasions. While I am at that part of the thing, for fear I should forget it, I wish to correct an impression no doubt produced by Captain Ball's evidence, when he said that I and Mr. Montague said that drumming parties were about to be formed. That was not exactly the right thing. We said that no doubt if they were not put an end to, our influence would not restrain the parties much longer; that opposition drumming parties of Catholics had been got up in other places, and that such a thing had been mentioned here.

Mr. Commissioner COFFEY.—That is pretty much the substance of what he said himself.

Witness.—It impressed my mind that there would be some sort of attempt to get them up, in order to put an end to it.

Mr. *Barry*.—Captain Ball said it was suggested to form them.

Mr. Commissioner COFFEY.—It is perfectly true that in other parts, towards the country, bands have been formed and demonstrations made, and that they go parading parallel to the road, one set of fellows fifing at one side of the hedge, and another at the other; and

unless some party of influence and moderation gets between them—

Witness.—If I were there I would oppose such a thing strongly.

2516. Mr. *M'Laughlin*.—As being a greater evil?—Oh, certainly, a far greater evil than the present.

2517. In such a case bloodshed is inevitable?—I would be afraid of it. I heard that at Armagh there was.

2518. Is it your opinion that they should be put down?—Yes, certainly.

2519. Do you believe that the authorities, if so minded—if resolutely and sincerely determined so to do—could put them down?—I believe they could in two ways.

2520. Mention them?—First by law; and next by influence—discountenancing them.

2521. The law is a matter that we need not discuss; I presume you refer to the ordinary law as defined by the Chief Justice of the Common Pleas?—I do.

2522. And the law adviser?—I always believed that that was quite sufficient.

2523. And also the late Lord Chancellor Brewster?—Yes, that has been very extensively read and commented on by the Catholics about here.

2524. I believe that has been taken by the Catholics as—?—A sort of text-book.

2525. As regards the law?—Yes, it has been, and they have steered by it.

2526. Mr. Hayden, have you confidence in the magistrates as regards the administration of the law in these party cases?—Certainly not.

2527. I need hardly ask you whether, apart from the party cases you have not the utmost confidence in them as men of intelligence and integrity?—Oh those I know intimately I would depend anything on, in a great measure; some of them I would depend any mortal thing on; but they have some peculiar hallucination about these party cases that I cannot account for.

2528. I believe that is the prevalent opinion?—I think so.

2529. We have had a host of testimony on the subject?—I think so. I think some of them very deserving of being respected in their ordinary class of life as gentlemen.

2530. Has this opinion on your part been the result of any recent occurrences, or has it been a prevalent opinion for some time back?—Which opinion?

2531. The opinion as to the want of confidence in party cases?—Oh, it has arisen from time to time, from the result of party cases having been tried, and from a thousand and one little incidents that have occurred in those cases getting into the public mind. Some instances occurred of party cases that we thought were not fairly treated. It has filtered through the public mind in that way, I believe, and taken hold of it so far as the Catholic party are concerned.

2532. Do you think the Catholics would have confidence in the administration of the law by having a stipendiary magistrate for the party cases, apart from the local magistrates, and requiring that stipendiary to be resident, whether Catholic or Protestant?—I do:

and I go farther than a great many, for I think the law at petty sessions, which is a court that more people come into connexion with than any other court in the realm, should be administered directly by paid magistrates everywhere. I am prepared to argue the question that it would cost less in the end than the present state of things.

2533. I suppose you mean the expense of occasional commissions?—Ay, and the expense of numerous prosecutions at the assizes and sessions—and in other ways—which I think would pay resident magistrates to administer the law at petty sessions courts.

2534. Mr. Commissioner COFFEY.—And exclude the gentlemen of the country altogether from taking part in the administration of the law?

Mr. *M'Laughlin*.—In party cases.

Mr. Commissioner COFFEY.—He says generally.

Witness.—I have formed that as my own opinion.

2535. I only want to know is that your opinion—that you would exclude the country gentry altogether from any part in the administration of the law?—That has been my opinion, although I have heard it argued with great ability that under such a system everything would be in the hands of the police and the Government and the people would have no influence. There is a great deal to be said as to that; but still I think it would cost less in the end and the people would have confidence in the law. For instance, the people have perfect confidence in the chairmen of quarter sessions courts, and in the judges; and if men were made independent—

2536. The magistracy of the county are associated with the chairmen of quarter sessions in criminal cases?—I know they are. They have equal power with the chairmen.

2537. Mr. Commissioner EXHAM.—And you would dissociate them from the chairmen?—Well, I have seen great injustice at sessions. For instance, in spirit licence cases, I have seen gross injustice perpetrated by magistrates, some of them forgetting their position and abdicating their duty completely as regards spirit licences. I have known cases in this Court where magistrates came here for the purpose of having spirit licences granted to houses that they were the landlords of, and objecting to those that they were not the landlords of. I have seen gross licensing cases in which the magistrates abdicated their duty completely.

2538. Mr. *M'Laughlin*.—We are not on that now. Do you know, with reference to a question that I will put presently, that there is a standing order of the Attorney-General—taking from the courts of quarter sessions all criminal cases of a party nature and sending them on to the assizes?—I have heard that.

Mr. Commissioner COFFEY.—No, no, that is a mistake. That is not the purport of the order at all. The purport of the order is, that the Crown Solicitor shall exercise, in conjunction with the chairman, a discretion with reference to sending party cases, or what appear to be party cases, to the assizes, on this ground, that at assizes there is supposed to be a greater area to take jurors from, rather than allow the local prejudices that would be likely to prevail amongst the close friends and intimate every day associates of the parties to take effect at the trials.

2539. Mr. *M'Laughlin*.—Just so. I believe there are no jurors at petty sessions?

Witness.—No. If there were—

2540. Mr. *M'Laughlin*.—Don't you know there are no jurors at petty sessions?

2541. Sergeant *Armstrong* (to witness).—"If there were"—you did not finish the sentence?—Well, it is a novel question that I have not made up my mind on.

2542. Mr. *M'Laughlin*.—I suppose, briefly, you would rather have the law at petty sessions administered by professional lawyers than by country gentlemen?—I would.

2543. In consequence of the great numbers that resort to it as a tribunal of first instance?—I think the public would be more satisfied; that is my opinion.

2544. On the occasion when your place was wrecked

when did you first see the Orange party that day?—I saw the first people coming in. The Castlecaulfield party came in by the Donoughmore-road.

2545. Had you been out walking?—I was out on Gallows'-hill that morning walking. I had a nephew of mine, a stranger from Hollywood, to whom I was showing the country, when we saw a party coming in. They were a weak party—a small party—and they were going to a large party at Donaghdeed, on the Moy-road, where a large gathering was to be that day. They came on, took a little *detour* round Gallows'-hill, and came in below Erasmus Smith's school at the Court-house. They came round the Court-house, across George's-street, and up Scotch-street, where the collision took place.

2546. Were you present at the collision?—I was not present at the collision; I was immediately afterwards.

2547. Tell what you saw immediately afterwards when the collision was over?—I saw the Rev. Mr. Quin and the police.

2548. The gentleman who was examined?—Yes; he was then curate in Dungannon. There was a very large excited crowd, principally of women, in Scotch-street, at the mouth of Shamble-lane. They were very threatening-looking. They got the drumming party into Mr. Bryer's gateway; and after some time Father Quin pacified the crowd as well as he could, and the drumming party got away, I believe, without their instruments. Some of them were broken, I understand.

2549. That was about eleven or twelve o'clock in the morning?—It was before twelve, I should say.

2550. What was the number of the drumming party at that time?—It was a small number; not very many men, boys, and some women. A few police, I should say, could stop them.

2551. Mr. Commissioner COFFEY.—Did they number as many as fifty or sixty?—No, I think not.

2552. Mr. *M'Laughlin*.—Were they a contingent from some particular locality going to an aggregate meeting?—Yes, I think they were from Castlecaulfield. I knew a man that was with them.

2553. Mr. Commissioner COFFEY.—They were few?—They were few; and more in numbers than strength, because they were boys and girls.

2554. Mr. *M'Laughlin*.—After they left did the town remain quiet for some hours until it was known that they were coming back?—For nearly three hours it was perfectly quiet, as quiet a day as ever I saw since.

2555. About what time of the day did the Orange party arrive back in the town?—I would say about three o'clock.

2556. Did the party on coming back to the town confine themselves to the number at which they originally left it, or were they more numerous?—Oh, an enormous number.

2557. What would you estimate them at?—I could not estimate at all, for I was thoroughly frightened; I never saw anything so frightful looking in my life.

2558. I believe they were from a gathering of Orangemen?—I understood them to be all of the party that were out at Donaghdeed.

2559. The party that you saw going out in the morning had drums?—They had.

2560. And I suppose one fife to keep the drums straight?—There was music.

2561. That is a polite way of describing it. Had they arms?—None. I saw no arms at all.

2562. I am talking now of what they were when you saw them?—I saw nothing like arms.

2563. Were all the drums kept from them in the morning?—I think so.

2564. When the aggregate party came back, I suppose it was evening, or afternoon?—It was about three o'clock.

2565. Would you estimate them at 2,000 or 3,000?—I have reason to think so.

2566. Mr. Commissioner COFFEY.—You have the sworn depositions of the police to the effect that they numbered between 2,000 and 3,000?—I have heard so, and I have no reason to doubt it.

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August 19.

Mr. John Hayden.

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August 19,
Mr. John
Hayden.

2567. Were they armed with scythes, pitchforks, bludgeons, and other weapons?—I believe so.

2568. You saw them?—Certainly, the pitchforks.

2569. I believe they had drums?—Oh, the sound was like—

2570. A great number of drums that created any amount of alarm?—No doubt about it.

2571. Universally amongst the Catholics?—I think it must have been universal amongst everybody. I never heard or saw such a scene in my life, and I hope never to see it again.

2572. I hope not, but it is just possible. Where did you see them first?—In Church-street.

2573. Coming up the hill towards Market-square. Where did they go when they went out of Church-street?—Down Scotch-street and round George's-street.

2574. Is that the present street?—Yes.

2575. Across here; what then?—Where the police were drawn across.

2576. How were the police drawn across George's-street?—Across the hollow part of it, or about the Market-gate.

2577. What number of police were there?—I estimated them in my own mind at somewhat near forty.

2578. Were you present when the last witness, Gettings, was examined?—I was.

2579. Were you present when the police ranks were broken, and one policeman wounded?—I saw the commotion, and the policemen being ordered away. I don't know the details about it greater than what Gettings stated; I think he saw better than I did. It would be very difficult to give a description of it from the terror that prevailed—very difficult.

2580. They broke through the police?—They did.

2581. And got in?—They did.

2582. Where did they go to then?—The police, and I think Captain Smith, the Sub-Inspector—

2583. I am talking now about the processionists?—The processionists went on up towards Irish-street. The police formed across Shamble-lane at my corner there—I think the same police that were below. They formed across in any case.

2584. When they got there I suppose there was no doubt at all that they were in an essentially Catholic district of the town?—Altogether.

2585. And I believe Scotch-street is exclusively—and I am very glad to hear it—inhabited by the other party?—No part of Dungannon is exclusively inhabited in that way except seven or eight houses in Northland-row.

2586. The Catholics that preponderate in Irish-street make it pre-eminently a Catholic quarter?—I think there are only two or three others that live in it.

2587. What happened when the police were drawn up across the mouth of Shamble-lane, at your house?—For a moment or two I did not see the commencement of it. Mr. Sheil, the solicitor, and I—

2588. Is he alive now?—He is.

2589. Is he in this town?—He is not. I was with him across the lane, and the party on our side—the Catholic side—were inside the police, and thought he was there for a wrongful purpose.

2590. The Catholics were behind the police in Shamble-lane?—They were, and the others were in front of the police coming up. A woman charged him with spying. I said to him to come in. He said—"No, I will go over and see Colonel Knox, to see what can be done." So I went upstairs.

2591. Yours is the corner house?—Yes.

2592. Your hall-door is in Shamble-lane?—Yes.

2593. And your shop door is in Irish-street?—Certainly.

2594. Were you in Shamble-lane when you spoke to Mr. Sheil?—I wanted him to come up for fear of annoyance.

2595. What did he say?—He said he would go to Colonel Knox and see what could be done. I then went up and took out the under portion of a window of my front room that looks into Irish-street and Shamble-lane.

2596. Tell what you saw?—I saw the row. The police had broken and drawn up again, a perch or two up the street. The magistrate was jostled among the parties.

2597. Who was the magistrate?—Mr. Coulson. He is dead, I believe.

2598. So I think. Yes?—Well, the people were fighting promiscuously.

2599. Was it very poor work?—It was a very terrible scene. I was looking out when a large stone knocked out the sash above my head. Then the sound of glass I think became quick and incessant, and the windows were smashed around me. I looked out, dodging the stones that were coming in, and saw one fellow with a large stone. I pointed a pistol at him, and he lay down on the ground. I was so amused at the utter cowardice of the fellow that I did not fire the pistol. In fact I could not fire the pistol, for there was no cap on it.

2600. He was frightened?—Yes.

2601. Mr. Commissioner COFFEY.—You had him covered?—Oh yes, thoroughly covered, and he lay down there until he crouched to the very ground. Then, of course, the drumming party, being so strong over the others, who were only few in numbers, swept them off completely.

2602. Mr. *McLaughlin*.—Swept the opposing party off?—Off completely, and rushed into Shamble-lane. Some of them rushed through it, smashing the windows as they passed, and some rushed into Scotch-street.

2603. Before that they had completed the wrecking of your house?—Well, more completely than I wished.

2604. Did they do anything afterwards to it?—There was, I suppose, half a cartfull of stones in the drawing-room, and the plates on the wall were smashed.

2605. Mr. Commissioner COFFEY.—The plate glass?—No, but the engravings—pictures. There was one stone that seemed to have been carried from a distance—it had all the appearance of having come from a distance; and another stone went through the drawing-room window and the lobby window clean into the yard. The wrecking was sufficient and complete.

2606. That being so they passed Shamble-lane, and went along Sloane-street. Did they go into George's-street?—Down Sloane-street, smashing away.

2607. You heard the smashing of the glass?—Yes. There was one thing that I peculiarly noticed. During the wrecking the police were drawn up two perches above, in Irish-street, going through some evolutions, and as soon as the great big drumming party passed they drew themselves across behind them, quietly, at the corner, and remained there while the smashing was going on. I thought that a very peculiar piece of military display.

Mr. Commissioner COFFEY.—It is very hard, you know, to determine what is best to be done under such circumstances, for one imprudent act might cause blood to flow, and innocent people to be shot, and all that sort of thing. They had only forty men to cope with this desperate mob.

Witness.—I don't mean that they should have shot the mob, but they should have followed the party that was wrecking, and tried to prevent it, in my opinion, instead of drawing up at the rear.

Mr. Commissioner COFFEY.—However, I suppose, they were under a skilful man.

Mr. Commissioner EXHAM.—No doubt about it. Mr. Coulson was a gentleman of very great experience and great sagacity.

Witness.—Well, he did not show much experience at that time. I would not speak wrong of the dead, but I think he should have been with the body of police. If so he would have cleared the street without wounding a man. I formed that opinion at the time. If he had stuck to his men as a commander as he should have done, instead of—

Mr. Commissioner COFFEY.—We all know that when a shot is fired most desperate consequences follow, and innocent people suffer.

Witness.—I have talked the matter over with military people, and they say that forty police could have cleared the town if even they had pretended to charge them, in double quick, for they had space enough.

Mr. Commissioner EXHAM.—These military people that talk after the thing is over, may be would not do it themselves.

Mr. *McLaughlin*.—So far as the witness is concerned he seems to have been disposed to act very promptly for the protection of his own house.

Mr. Commissioner COFFEY.—I think he acted with coolness and sagacity.

Mr. *McLaughlin*.—Instead of having their houses prevented from being wrecked they had military manoeuvres.

Mr. Commissioner COFFEY.—I don't think it is altogether fair to blame a public force, particularly when the parties are not here. Mr. Coulson might give a very satisfactory explanation, and the people who were then in authority—the other magistrate; but we have not them before us.

Witness.—I don't like to say anything of Mr. Coulson. He is dead. He was a gentleman that everyone respected in the county for a great number of years, and I am sure it was an error of judgment on his part, if there was an error at all.

2608. Mr. *McLaughlin*.—Going across the corner of George's-street, they came to the Northland Arms hotel?—Yes.

2609. That is where Mr. Hughes, now of the Ranfurly Arms, then was?—Yes. I did not follow them.

2610. Did you see the hotel afterwards?—I did.

2611. Was it thoroughly wrecked?—It was fully as well, if not better wrecked than my own house.

2612. Do you know where Barrack-street is?—I do.

2613. Did you see any houses in Barrack-street wrecked?—None in Barrack-street, but further down.

2614. Where?—Down at Miltown some small houses were broken.

2615. You were under the impression that it would have been wiser for the police to have kept at the tail of the wrecking mob?—I think so. I thought so at the time. There was no really very formidable opposing mob. The number of the opposing mob was small. The people that would have fought desperately, the Catholic butchers, were all away at Stéwartstown fair.

2616. Sergeant *Armstrong*.—That would have fought desperately?—I think they would, and very properly, when they were attacked. When any party is attacked it is fair on their part to resist.

2617. Mr. *McLaughlin*.—As far as you saw, I think you have already given it as your opinion that these people might have been prevented from coming into the town?—The first people in the morning?

2618. Yes?—Oh, they might have been prevented, but it would have been decidedly difficult to prevent the evening party coming in, for there was some very bad arrangement apparently. There seemed to be no police force to prevent the evening party from coming up Church-street; if there had it would have been easy to prevent them; but I think the police had not been in from Castlecaulfield at that time.

2619. Mr. Commissioner EXHAM.—Do you know what force was in town at all?—During the first part of the day?

2620. No, but at any time. What force had Mr. Coulson?—He was at Castlecaulfield in the morning, and was not in until the drumming party had either got into Church-street or up Church-street, and nearer to the town. It strikes me that whatever force Mr. Coulson had under his command was hurriedly brought in, and that he had only time to utilize them here in George's-street; that is my impression. Of course there was a lesser number of police in town; perhaps not a dozen.

2621. How many in number were the police you saw drawn across the street?—I have estimated them, I may be wrong, at about forty.

2622. You do not pretend to say that that is accu-

rate?—I do not; it might be less, probably was a little less.

2623. Do you know Colonel Knox?—I do.

2624. Did you see him that day?—I cannot call to my recollection seeing him farther than at the head of Scotch-street.

2625. When was that?—When the large party were coming in.

2626. From Church-street?—Yes.

2627. Across the square to Scotch-street?—Yes.

2628. Did you see him doing anything with reference to resisting the progress of those people—it is only right that I should ask you?—Well, what I saw him doing was, that he rather seemed to wish that they should go into Scotch-street than into Irish-street.

2629. He was right there. They did eventually go into Irish-street?—They came round the other way. They would have gone into Irish-street through the head of the town, but Colonel Knox's appearance prevented that.

2630. In point of fact he sent them round by Moon's-place, and the result of the deviation was that they came into Irish-street that way—I don't mean that he directed them?—No.

2631. They came into Irish street the other way?—Yes, certainly.

2632. I don't mean to suggest that he had anything to do with that?—No, nor I don't.

2633. Mr. Commissioner COFFEY.—What I understand this gentleman to say is, that Colonel Knox did the most he could to prevent them from getting into the place where most of the Catholics were?

Witness.—That is my opinion. I think Colonel Knox chose the lesser of two evils, namely, getting them down Scotch-street instead of direct into Irish-street.

2634. Mr. *McLaughlin*.—Did Colonel Knox seem to have much influence with them?—Well, he succeeded in turning them in that direction; for if you get the leader to turn all the party will follow like ducks.

2635. Yes; delightful little quiet ducks with scythes and pitchforks. Now, Colonel Knox is not an Orangeman?—Not in principle, I know.

2636. Or conduct?—Well, I think I never have known him to oppose them. I am certain he would oppose outrage.

2637. To be sure; everybody would do that unless those who take part in it. Do you remember the night of the 7th August following that?—I do well.

2638. That matter about the taking of the drums from the party that came in on the morning of the 12th July, 1865, leads me to believe that the drums remained in town?—So I since have understood.

2639. And do you remember whether a body of Orangemen came into the town on the night of the 7th August following?—They must have come in.

2640. Did you see them?—Going out I saw them.

2641. They were not townspeople?—No.

2642. Therefore they must have come in?—There were some townspeople with them.

2643. Are you able to say whether the arrests made consequent on the 12th July affair included any Roman Catholics?—It did; it included a few who had taken part in attacking the Orange party in the morning when coming up Scotch-street. In fact there were some of both parties to the first breach of the peace sent forward.

2644. Was anyone sent forward in relation to the second breach of the peace—the afternoon breach?—There were a number.

2645. Were any Catholics sent forward in reference to the second breach of the peace in that day's proceedings?—No, there was not. There were none of them identified.

2646. Do you know what the relative numbers sent forward for the first portion of the day's transactions were?—I cannot say exactly; but I think there were about eighteen of the—as we call them—Orange party sent forward altogether; eighteen or twenty, I under-

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stand, and only three or four of the Catholics—three, perhaps, that is for the morning.

2647. You are confining your observation to the 12th of July only?—Yes. I heard the numbers to-day, but I had thought it was about twenty myself before.

2648. On the 7th of August you say you saw them. Where did you see them?—In George's-street.

2649. That is the street of the Court-house?—Yes.

2650. They were the Orange party?—They were.

2651. Had they drums?—They had.

2652. Many of them?—I could not tell.

2653. Was there a strong body of Orangemen there?—The first intimation that we had of it was a sudden beating of drums in the direction of Barrack-street; and from the alarm and terror, in a short time there was a terrible commotion in the town; so much so that I saw people leaving their houses, closing them up, and going to another part of the town altogether; and several other things like that.

2654. Give us them?—I cannot. What I saw I can give you. I heard that one woman tried to jump out of a window with a child in her arms, from utter terror. We all closed our places as fast as we could, and got into a state of defence, for we believed from the threats that were launched, "that they were going to do more than break our windows the next time." Paving stones were raised, and every available means.

2655. By the Catholic party?—Yes, to protect themselves against the threatened invasion. A number ran down to the corner of the Court-house, and the drumming party passed the Court-house towards Erasmus Smith's school, firing shots.

2656. You heard the shots?—Certainly.

2657. Did you see the flashes?—No, I did not. I don't think I did.

2658. Did you observe any police at that stage of the proceedings?—I cannot say that I did. I think there were police here, but I cannot recollect.

2659. This was between three weeks and a month after the affair of the 12th of July?—It was.

2660. What occurred on the 12th July accounted for the terrible trepidation that the Catholics were in on the 7th August?—It did. It was really frightful. I never saw anything like it except on the 12th of July itself. I was very much frightened at first.

2661. When did you first see the police on the 7th of August?—I noticed them going up Irish-street that night until twelve o'clock.

2662. What time of the night do your former remarks apply to?—I think it was about nine o'clock in the evening, just as I was going to shut for the evening—between eight and nine o'clock—about the shade of evening when the thing commenced.

2663. The Catholics were principally in Shamble-lane and Irish-street and thereabouts?

2664. Mr. Commissioner COFFEY.—You saw, as I understand, no party leaving the town that morning?—No. I understood since, but of course—

Sergeant *Armstrong*.—Never mind what you heard; only say what you saw.

Witness.—I was only going to explain that we understood it was the party who came in for the drums going out, with others.

2665. Mr. Commissioner EXHAM.—People from the country districts?—With others who joined them.

2666. Mr. *McLaughlin*.—Did you observe the people of the town passing through the Catholics when massed in Irish-street and Shamble-lane?—I did. No one was going to be injured. It was only—

2667. No harm was intended to them?—Certainly not. It was for the purpose of defence; for one party was beating drums and firing shots at an early hour of the morning at the railway bridge, and the Catholic party were firing shots in the town to show that they were ready.

2668. As I understand you, this state of affairs continued all night?—It did. There were two camps, just.

2669. Two camps. Now, going down opposite

Scotch-street there is an extension of the road across the railway?—It does.

2670. Was it in the rural district beyond the railway crossing that the Orangemen were encamped?—No, not at all. There is another railway bridge at the goods station. It was on the Aughnacloy-road, at Erasmus Smith's School.

2671. There is a rising ground there?—Yes.

2672. Were the Orangemen near that?—I consider they were rather over the railway bridge.

2673. That is, by the direction of the shots?—Yes, they went over the railway bridge; and there is another old road coming in, that I imagined they would come on.

2674. Where were you at this time?

Mr. Commissioner COFFEY.—Preparing for defence.

Witness.—I was at home after they went out.

2675. Did you remain up all night?—Up to an early hour the following morning.

2676. All through the night they were firing?—From time to time on both sides.

2677. But they never came to within shooting distance of each other?—No, they were at a safe distance.

2678. Were any of the Orange party arrested at the close of that day's laughable proceedings?—I never heard of any of them, and I remarked this very extraordinary state of things, that the police were sent through the Catholics to identify as many of them as possible, while none of the other party were looked after, and not a name taken of them. It has been a subject of great complaint ever since, and has been regarded as a gross dereliction of duty on the part of the magistrates who had the police under their command that night.

2679. How many Catholics were sent to the Omagh assizes for the 7th of August?—Twenty-three or twenty-four.

2680. Mr. Commissioner COFFEY.—Were none of the other party sent?—Not one.

2681. Do you know that to be a fact?—I do, because I was at the assizes and bailed all the Catholic party myself—all but one—to stand their trial. They were summoned the evening before, and only got until ten o'clock the next morning to give bail, or else they would have been put in gaol until their trial. There never was a greater injustice or outrage in any country. It was a gross outrage; and a set-off against the other as it turned out.

2682. Mr. Commissioner EXHAM.—Do you mean to say that it was an outrage upon justice to send them forward?—I do not; but I say that the other party should have been sent forward. I say that any party who commences an act of the sort should be sent for trial, no matter who they are.

Mr. Commissioner COFFEY.—We are not prejudging the matter; but I have the concurrence of my friend here when I say that we consider it was a gross injustice—supposing it to be a fact.

Witness.—It was a fact, sir; and the magistrate who had the command of the police that night spoke to me at Omagh. He said—"I hear you are setting yourself up against a settlement; both sides will plead guilty, and be let to go home." I said—"I don't believe in that. Let the parties that commit outrages be punished; and if your people do anything wrong they should be punished too." I said that to Mr. Brooke at Omagh, and I believe it still.

2683. Mr. Commissioner EXHAM.—Who was the magistrate that had charge of the police?—Mr. Brooke.

2684. Mr. *McLaughlin*.—Were you in court when Mr. Gettings said "it was nicely done?"—I was; and it was nicely done, as many other nice things have been done.

2685. Then, I believe, that both parties pleaded guilty, and that that ended it?—Well, I opposed it as far as I could—

2686. I know you did?—Because I lost my temper, but other people said there was no use in either party going to gaol.

2687. Did we say anything about wives and families?—You did, you and Mr. Rae did.

Mr. Commissioner COFFEY.—It appears in the report.

Mr. *M'Laughlin*.—Certainly. I would not sacrifice my clients, but I thought they were sacrificed before they came there at all, and I say so now.

Mr. Commissioner EXHAM.—Something else may have appeared to the Judge who tried it.

Mr. Commissioner COFFEY.—Yes, if it was brought before him. I am pretty confident that such a state of things—supposing the matter of accusation to have been proved—no Judge would be a party to.

Mr. *M'Laughlin*.—What would be the use of my sacrificing those men to abstract notions of justice, where there would be Orangemen by the thousand afterwards to do the same thing again?

Mr. Commissioner EXHAM.—There is this to be said, that on the informations that went forward, and to which the Orange party, as you call them, pleaded guilty, there was a clear case against them. They were identified by at least half a dozen persons, so that you could not suppose that any jury would acquit them.

Mr. *M'Laughlin*.—Not I! You would be astonished at the strength of my imagination in that respect.

Witness.—I think both parties should have been put to a formal trial at any rate. That is my opinion.

Mr. *M'Laughlin*.—I think Mr. Exham is speaking of the transaction of the 12th of July.

Mr. Commissioner EXHAM.—Certainly.

Mr. Commissioner COFFEY.—I am commenting on two distinct transactions, separated by an interval of a few hours. If it be the fact, as is now stated—I hope it will be explained—that for the parties in the morning there was a sort of set-off made in connexion with the evening transaction. If, when this terrible occurrence happened, while one party were the instigators and originators, by going through the town in this way, and firing shots, at an encampment a short distance from the town, and the other party were standing there for the purpose of protecting their houses from being wrecked, as they were on a former occasion, the names of persons belonging to one of these parties exclusively were taken down and looked after by the police, and not one of the others was made amenable, of course no fair-minded man could come to any conclusion on the subject but one.

Witness.—That is perfectly true.

Sergeant *Armstrong*.—I may be wrong, but I thought the difference of time was not of hours, but of several days, namely, the 12th of July and the 7th of August, but I don't see that it makes any difference in your lordship's observations.

Mr. Commissioner COFFEY.—No, I was wrong. One transaction was on the 12th July and the other was on the 7th of August.

Sergeant *Armstrong*.—A batch of one side was sent for the 12th July, and a batch of the other side was sent from the 7th August, and counsel settled it amongst them.

Mr. *M'Laughlin*.—There is a little confusion here.

Witness.—There is.

Mr. *M'Laughlin*.—The affair of the 12th July consisted of a morning affair, in which there was a small party, and an evening affair in which there was a very large party—is not that so?

Mr. Commissioner COFFEY.—According to the witness's testimony none of the Roman Catholics were made amenable for the transaction of the 12th of July, during the evening, nor I don't see how they could have been. Very well. Then we come to the transaction of the 7th of August, as described by the evidence given by this witness, if it be correct, and if it be not explained, qualified, or modified in some way. It may be only an impression created by hearing one side of an affair when we have not heard the other side.

Witness.—On that evening a party came in and the people were obliged to arm themselves for the defence of their houses. The former party were allowed to remain there firing shots until an early hour next morning. The names of the others who so acted—

foolishly or wisely—in their defence, were taken down and sent forward for trial, while the others were not noticed; and that is what I call a gross outrage on justice.

2688. Sergeant *Armstrong*.—Who were the magistrates who were in charge of the police on the 7th August?

Witness.—I saw Mr. Brooke that night with a number of police, and they were sent through the Catholics.

2689. Mr. Commissioner COFFEY.—Was Mr. Brooke a resident magistrate?

Witness.—He was agent to the Earl of Ranfurly.

2690. Mr. *M'Laughlin*.—Do you know how many police were in town that night?—I am not aware that there was any extraordinary number. Twelve is the ordinary number.

2691. You said that they were summoned at ten o'clock in the evening for ten o'clock the next morning?—Yes, to prepare for their defence and to appear with bail.

2692. Who was the magistrate before whom they were to appear the next morning?—Mr. Coulson.

2693. And you gave bail for them?—For the greater number; I believe all but one or two—myself and a friend of mine in town.

2694. You saved the others from being imprisoned for the large transaction?—Just so, and the reason we did it was because we conceived the thing to be so utterly unjust, and the feeling raised by the treatment was such that we thought we would do a magnanimous thing for them.

2695. I suppose this transaction tended to make these drumming parties still more dangerous?—It did.

2696. And tended to cause a great want of confidence in the authorities that would act so?—It did on that occasion. I believe that the authorities here for a long time will not recover that blow they got, amongst our people at least.

2697. I suppose your "people," as you familiarly call them, interpret this drumming by the light of that incident?—They do.

[Here the Court adjourned for a short time. On resuming, the examination of the witness was proceeded with.]

2698. Do you remember the day of the Killyman meeting?—Which meeting? There have been meetings at Killyman each year for the last three years.

2699. That is '68, '69, and '70?—And I think the present year.

2700. Do you remember two or three years ago a meeting there, when the parties, on their return, came into Dungannon beating drums?—I recollect, on the morning of the same day, a party going through to join the meeting.

2701. Was it numerous?—Well, it was pretty numerous.

2702. How many?—I think there might be perhaps under a hundred. I could not accurately say. They passed along the usual road.

2703. That is down by Erasmus Smith's school?—Down towards the railway station.

2704. That was before Captain Ball came here?—Yes.

2705. Did you see them?—I did.

2706. Had they any drums?—They had.

2707. Anything else?—Well, I saw a great friend of mine at the head of them, with something like a book or case in his hand.

2708. Who was the friend?—I won't tell, unless—he is a very great friend of mine, and a decent man.

2709. What year was that?—I think it would be '68.

2710. Sergeant *Armstrong*.—The 12th?—The 12th. Passing the Fowl Market there were stones thrown at the party, and there were a number of Roman Catholics got very much excited, and there was likely to be a breach of the peace. I think there was a breach of the peace, for stones were thrown. The drumming party proceeded on to where the road from the railway station joins Barrack-street, and the Catholic party ran, and there was likely to be an attack there

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FOURTH DAY. Mr. Newton was present on the occasion. I suggested the arrest of a Catholic, who was particularly obstreperous.

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Hayden.

2711. Mr. *McLaughlin*.—Was that on the return from Lisburn?—No. I suggested that a Catholic should be arrested. Mr. Newton said it would be difficult to do that, and perhaps it would be better to wait.

2712. Sergeant *Armstrong*.—Was it '68 or '69?—I think it was '68. Mr. Newton can correct me if I am wrong. I cannot recollect the year, but I recollect the circumstances very well.

2713. Mr. *McLaughlin*.—Do you remember if anyone was arrested?—No person. As I said I suggested the arrest of a Catholic who was acting in a manner I did not like. I was afraid there was getting up a row. If one fellow commences everybody follows like ducks, as I said awhile ago.

2714. Do you remember being at prayers in the Catholic chapel in the month of December?—I do.

2715. That would be some part of December prior to the 8th of that month?—It was a Catholic festival in December.

2716. Do you remember hearing the sound of drums on the Killyman-road on that occasion?—I do.

2717. The old Catholic chapel here is not a very large building?—No, a small, old building.

2718. And I suppose the congregation fairly fill it when they join?—They do.

2719. Do you remember whether the drumming you heard on that occasion created any alarm at all or not?—It did decidedly create alarm.

2720. How did the alarm manifest itself?—The drumming was heard about the end of the ceremony, and a number of people, particularly the women, remained in the chapel, and seemed to be terrified very much, and when we came out there was a crowd about the gate, looking down into the darkness of the Killyman-road where the drumming was, and remaining there, seemingly afraid. They did not seem to know whether they should proceed home or not in that direction.

2721. Do you remember the time the chapel windows were broken?—Yes, I recollect the time.

2722. Can you fix the date for me?—The date was in April, '69. I think it must be about the 23rd of April, '69.

2723. Just so. That is the date. No. 8 in our bill of particulars. Were you in the chapel at the time?—No.

2724. Did you see the chapel afterwards?—I did not look at it.

2725. Do you know a gentleman named Stanley, one of the magistrates?—I do.

2726. I believe Mr. Stanley had been for some time formerly—it is no reproach to him—in the profession of the law?—Not to my knowledge, but I heard so.

2727. There is no doubt of it, and there is no harm in it. Men may be lawyers without being bad men?—That is a matter of opinion.

2728. Now do you remember being present in Court when that attack on the chapel windows formed the subject of magisterial investigation here?—I am not aware that it formed the subject of magisterial investigation.

2729. Well, it was mentioned?—It was mentioned. I think it was introduced by Mr. Newton. As I recollect there were the windows of the house of another man broken on the same evening.

2730. Confine yourself to what took place on the bench in your presence?—I know what I want to say. On the same evening there were the windows in the house of a man named Hewson broken.

2731. He, notwithstanding his name which is *prima facie* evidence to the contrary, was a Catholic?—Yes.

2732. Go on?—The Catholic chapel windows were also broken, and a number of the Catholics with Dean Slane—who were rather indignant at this outrage, formed themselves into a committee, and went to expostulate with the Bench; wishing to show that they did not suffer with the patience that Catholics usually do such an outrage as this.

2733. Were you one of the Catholic committee?—I was.

2734. And in that capacity you appeared before the committee?—I did.

2735. What took place?—Well, we attended, and Mr. Newton was the first to introduce the matter to the Bench at the conclusion of the business. He said, "You, Mr. Smith, have something to say about the breaking of the chapel windows."

2736. Who is Mr. Smith?—The sub-inspector—and Mr. Smith said he wished the thing should be investigated or something like that, and Mr. Stanley asked was there anything on the book about it—"Is there any person charged?"—"No." "Well, then," says he, "I will not be a party to investigating so trivial an offence as breaking a pane of glass in one house and breaking two or three panes in another." That is as near his language as I can go.

2737. Did that create a sensation in Court?—It did. It was very ill taken by the Catholics, and not well taken by some of the magistrates either, I have heard since —

Sergeant *Armstrong*.—Tell us only, if you please, what occurred in your presence on that occasion.

Witness.—Well, I saw Mr. Newton—I did not see anything else—I saw Mr. Newton express his dissent.

2738. Mr. *McLaughlin*.—By his gesture did he indicate his dissent?—He did, and he said something I did not hear, but evidently he did not appear pleased with what Mr. Stanley said. It did not appear to please him at the time.

2739. It did not please you at the time?—I was indignant. I expressed my indignation at the time. We all thought it before the magistrates; as soon as I came out I expressed my indignation in unmeasured terms at a magistrate on the Bench doing such a thing before a mixed community—telling the Catholics that their chapel windows might be broken with impunity, and encouraging the Orangemen to do the like again. These are the words I made use of, and I believe it had that effect.

2740. Were you present when Mr. Stanley gave any explanation modifying the force of his original words?—None—I heard of none till this Commission opened. As I told you the Court was held in the room inside. It was suspended for a short time to consider the question, and I heard no more of it. I think I went away before the Court opened.

2741. Referring to Mr. Stanley again—I put this out of the regular order, to dispose of this gentleman and be done with him. Were you present at the police inquiry when Mr. Stanley was asked a question which he refused to answer?—I was.

2742. What was that question?—He was asked that question.

2743. What question?—The question, did he make use of that observation—that it was a trivial offence to wreck a Catholic house of worship. He said the file of the journals of that date had his reply, or words to that effect, and they might be consulted.

2744. They might be consulted?—Something like that.

2745. Was Mr. Stanley in your hearing asked the question whether he was an Orangeman or not?—He was.

2746. What did he say to that?—He declined to answer. I think he said, unless he was compelled by the president of the Court, and the president of the Court declined to compel him.

Mr. *McLaughlin*.—I asked the question, because these gentlemen are sometimes with the Orange society.

Mr. Commissioner COFFEY.—You are quite entitled to ask it. There is an allegation in the memorial that these gentlemen sympathize with these party processions.

Mr. *McLaughlin*.—If I had the choice I would rather never have to mention Catholic, or Protestant, or Orangeman, but I must do my duty.

2747. (To Witness.)—Now do you remember on the 12th July, 1869, the excursion of the Orangemen to Lisburn?—I don't know anything about that.

2748. Do you remember on the 12th of July, 1869, an Orange procession through Dungannon to Killyman, and a riot and stone throwing?—Is this the matter you have been speaking of lately? I am not quite sure whether it was in 1868 or 1869, as I said before.

2749. Do you know anything of the Killyman funeral case?—No, I only heard the case tried here—investigated before the magistrates.

2750. Before whom?—Captain Ball and Mr. Newton I think were present.

2751. Who else?—I don't recollect any other member of the bench.

2752. Was anyone sent for trial for that do you know?—I know there were informations taken or evidence taken, and sent up I believe.

2753. Were you present on any occasion in the year 1869, when it was proposed to put the question whether this assembly tended to provoke a breach of the peace?—I can tell you the circumstance and all about it.

2754. First, who were the magistrates as well as you recollect?—Mr. Molony was here; I believe Mr. Stanley was here, and Mr. Lyle, who is usually here, and I think Mr. Newton. I am not very positive.

2755. This was an affair in May, 1869. You name four magistrates—Mr. Molony, Mr. Stanley, Mr. Lyle, and Mr. Newton?—Yes, I give them from memory.

Mr. *M'Laughlin*.—You are quite right.

Mr. Commissioner COFFEY.—The petty sessions book will show.

Mr. *M'Laughlin*.—There is no doubt about the fact.

Mr. Commissioner EXHAM.—What is the exact date.

Mr. *M'Laughlin*.—The 10th of May, 1869. It is in the papers of the 11th—the next day.

2756. (To witness).—I think Mr. Cecil Moore, the Crown Solicitor, appeared to prosecute on that occasion?—He did.

2757. And I believe the charge was against Hodgett and Frizelle, that they with others did unlawfully assemble in the town of Dungannon, and commit a breach of the Party Processions Act, on the 23rd of April. That is the case referred to in the bill of particulars. Do you remember during the hearing of that case a proposal on the part of Mr. Moore to put the question, whether the proceeding tended to provoke a breach of the peace?—I do. I suggested the question myself to Mr. Moore.

2758. Do you remember a discussion, and the postponement of the further consideration of the question to a subsequent period of the proceedings?—I recollect the question was not allowed to be put, to be answered by the witness.

2759. Mr. Commissioner COFFEY.—Have you materials to show who prevented the question being answered?

Witness.—The attorney for the prisoners objected in the first instance. At an early stage of the proceedings the attorney for the prisoners objected.

Mr. *M'Laughlin*.—I have the newspaper here.

Sergeant *Armstrong*.—He had better tell us his recollection.

Mr. Commissioner COFFEY.—If he has a recollection of it, without the newspaper, it is better to have it.

Mr. *M'Laughlin*.—Considering that the magistrates themselves used the newspaper reports, this is rather hard lines.

Mr. Commissioner COFFEY.—You are not precluded from using the newspaper if the witness says he has exhausted his memory.

Witness.—I will give my recollection as it occurs to me. I think I am nearly accurate about it.

2760. Mr. *M'Laughlin*.—Who was the attorney for the prisoners?—Mr. Cochrane.

2761. One of the ablest men in the north of Ireland?—I believe he is. On the first occasion when the question was put at an early stage of the inquiry, as far as I can recollect, Mr. Cochrane objected, and I think the intimation of the bench then was, that at

another stage of the inquiry it might be put; or Mr. Cochrane said—"It is not evidence now; you may make it evidence again," or something like that, and it passed then. Well, later in the inquiry the question was pressed, and Mr. Stanley I believe was the first to say that the question could not be put—that in his opinion it was not evidence, as it was only the witness's own feeling. The bench took a moment or two to consider it, and then ruled—I suspect by a majority from what I saw of the discussion—that the question should not be allowed to be put; and the informations as taken by Mr. Molony did not include that question.

2762. Mr. Commissioner COFFEY.—Tell me as well as you remember exactly the question put.

Witness.—"From your knowledge of Dungannon and the events that have there occurred." I dictated the question myself and should be able to tell what it was. "From your knowledge of Dungannon, and the events that have there occurred, is it your opinion that such drumming parties are calculated to create animosity and lead to a breach of the peace?" That was the question, as near in ordinary words as I can put it. It was put in such a way as there should be no mistake in the mind of the witness, for he was aware that such things had led to breaches of the peace before, and very serious ones indeed.

2763. Mr. *M'Laughlin*.—Who was the witness?—A policeman named Blake—but a policeman, a sub-constable, at all events.

2764. When you say the "informations," you allude to what we call at present the "missing informations;" the ones that have been searched for this morning, and have miraculously disappeared?—No matter, they will turn up again sometime.

2765. Sergeant *Armstrong*.—What do you say was the name of the sub-constable?

Witness.—I think Blake was the name.

Sub-Inspector *Smith*.—He is not in the force now.

2766. Mr. *M'Laughlin* (to witness).—Did you hear any of the magistrates—any of the three or four present on the bench—dissent from that view?—Mr. Stanley said it was not evidence.

2767. But I mean dissent from the eventual ruling of the bench?—No, I cannot recollect if they did.

2768. But your impression is that there was a difference of opinion?—Oh, I know there was. At least I inferred it from the demeanour of the bench; and a man can tell a great deal from the demeanour of the bench occasionally.

2769. I suppose the demeanour of the bench would be pretty fairly illustrated by what they would say?—Although fairly illustrated by what they would say, I think what they would do would illustrate it better.

2770. Did you hear any of the bench say that the Protestants did no more than defend themselves on that occasion?—It was not on that occasion.

2771. What was that occasion?—That was the occasion of the Donoughmore riots of 1866.

Mr. Commissioner COFFEY.—That has been already the subject of an inquiry and report. A great deal of money has been spent on that inquiry.

Mr. *M'Laughlin*.—And well spent.

Mr. Commissioner COFFEY.—I am not saying it has not been well spent. I only mean that there is no necessity for going over it again.

2772. Mr. *M'Laughlin* (to witness).—That was the occasion on which that was said?—Yes. I recollect that occasion when the parties were tried, and there was great indignation about the ruling of the bench, so soon too after the '65 business, and, as I said before, that and several other things have so impressed the Catholics that I believe for a great number of years they will not have the same confidence in the administration of justice. I can tell you that that feeling has been created.

2773. Sergeant *Armstrong*.—By instances?

Witness.—By instances. A number of the Orange party were charged for an affair at Donoughmore.

2774. Mr. Commissioner EXHAM.—What date?—September, I think, 1866. They were brought for-

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ward here for trial and a number of Catholics; and the Catholics were returned, and the question that would have returned the others was not allowed to be put by the bench; and on that occasion the resident magistrate said—"Did the Protestants do more than defend themselves when attacked?"

2775. Who was the resident magistrate?—Mr. Molony.

2776. Are you speaking of the transaction that was afterwards the subject of inquiry before Messrs. Shaw and Kelly?—I am.

Mr. Commissioner COFFEY.—We refuse entirely to go into that.

Witness.—But you will find the feeling has still continued about it.

Mr. Commissioner COFFEY.—We are bound, and we will go into all the matters involved in the inquiry before us; but to go into a transaction that has already been the subject of a commission of inquiry would be wasting public time, and entailing on the public needless expense.

Mr. Commissioner EXHAM.—Just so.

Mr. Commissioner COFFEY.—That transaction must stand or fall upon the inquiry and report already had.

Mr. *McLaughlin*.—I think the inquiry and report explain themselves very fairly, but I was under the impression that the evidence related to what took place in 1869.

Witness.—No, that occurred in connexion with the Donoughmore affair.

2777. Mr. *McLaughlin* (to witness).—It was not one of the local magistrates—not Mr. Lyle, Mr. Newton, or Mr. Stanley—said it?—But the local magistrates refused the question. The particular gentleman who made use of the observation was Mr. Molony.

Mr. Commissioner EXHAM.—We have the report in that case that certain local magistrates did not send forward the parties for trial, acting on what Lord Chancellor Brewster informed them afterwards was an erroneous view of the law.

2778. Mr. *McLaughlin* (to witness).—Did you hear Mr. Courtney Newton examined at the police inquiry?—I did.

2779. There has been some question here as to the use by him of certain expressions, about which there was a great fuss when they were first mentioned—that is, that it was only the "low fighting Catholics" that these displays offended. Now tell us all about what he said on that occasion?—Well, so many questions were put, and sometimes answered, and sometimes half answered, that I must ask you to repeat that.

2780. I believe this inquiry was a peculiar one; it was a police inquiry?—It was.

2781. A lawyer, whether barrister or attorney, has no status as such there?—Yes.

2782. I believe my friend Mr. *McMordie* suggested the questions which were afterwards put to the witness by constable Lynch?—Lynch put the questions.

2783. Mr. *McMordie* in fact for the purposes of the inquiry was supposed to be Lynch?—It would be well for Lynch if he had Mr. *McMordie's* head. Well, the question was put—were these displays offensive to Roman Catholics? Mr. Newton said that they were not offensive to Roman Catholics except the low fighting portion of the Roman Catholics, and he said there were fighting parties on both sides, and he followed up by saying that no man having any religion would be offended, or something like that. He commented on it considerably, but I think it is justice to Mr. Newton to say that it was believed Mr. Newton misunderstood the feelings of the Catholics at that time.

2784. Do you think he is clearer now about it?—Well, I hope so.

2785. You heard that yourself?—I did.

2786. Do you know a man who was formerly in Dungannon, I believe he was born here, a man of the name of Dowse, now the Solicitor-General?—I do. I have the honour of his acquaintance.

2787. Do you remember February, 1869, when some effigy was burned here?—I recollect the occasion.

2788. Did you hear any shots on that occasion?—I did.

2789. Was it only a shot or two, or was it a continuous shooting?—There was a good deal of shooting—continuously for more than an hour, backwards and forwards. There was a good deal of firing; it was certainly a very remarkable event.

2790. I suppose these shots would be fired out of some fire-arms, guns or pistols?—I suppose so.

2791. They were crackers?—Oh, no, they were very heavy shots.

2792. Do you remember on that occasion seeing Colonel Knox, the member for the borough, and Mr. Newton going down Scotch-street?—I do.

2793. Followed by the police?—I do.

2794. Is that the occasion on which it is alleged that Mr. Newton was injured in the leg?—It is. I saw him lame the next day or two.

2795. You saw him walking lame the next day?—I did.

2796. Were there any arrests on that occasion?—I never heard of any, although I believe parties on both sides should have been arrested on that occasion.

2797. You mean of the effigy-burning party?—And the other party that attacked them coming up the street. I believe a number of both of them should have been sent forward for trial.

2798. You think both parties on that occasion as regards some of their members ought to have been made amenable?—I do.

2799. Is it a usual thing to insult people in the street and neighbourhood when party feeling runs high?—Well, I have heard of it being done. I have been insulted myself sometimes.

2800. It does you no harm?—No, I am pretty well able to bear it.

2801. Do you know whether on that occasion the police were near enough to those who took part in the affair, to identify any of them whether on the one side or the other in the effigy-burning, and the riot arising out of it?—I saw the police going down pretty hurriedly.

2802. Were they near enough to take the names of the people?—Well, I should think so. I am not able to say myself, but I would expect from the policemen there that names would be taken. I understood at the time, from the appearance of the number going down, I understood there were more policemen in town than ordinarily are—and that there was some understanding that the Protestant party were intending some ovation of the sort, and I could not understand yet why they could not take the names.

2803. Were the policemen after Colonel Knox and Mr. Newton as they went down?—Yes, immediately after them.

2804. And you never heard any prosecution was instituted in that respect?—No.

2805. That represents the whole of your information on the particular matters to which I have directed your attention?—Yes, I think so.

2806. Now, were you in Court the first day of the inquiry when the subject of this memorial touching Captain Ball was mentioned?—I was.

2807. I believe you are the Mr. Hayden referred to here as a publican and a sinner?—Yes.

2808. You are the Mr. Hayden pointed out as the man who got up all this business, and the memorial?—Yes, I did get up the memorial and I am not ashamed of it.

2809. Are you not astonished to hear that the bulk of the memorial was signed at the Chapel gate?—Yes, the greater portion of it was; one sheet was signed afterwards, and they are all pinned together in the usual way.

2810. Was your object to take advantage of the opportunity created by this prospective inquiry to have light thrown on the entire of these local proceedings?—That was the principal object; I thought it a very fair opportunity—the getting of such marked evidence from the resident magistrate—to get up a memorial that had been in contemplation several times before, and principally through my fault fell through after the rioting of '65.

2811. Were proceedings taken after the rioting of 1865 to get up a similar memorial?—There was a meeting of Catholics held in a public room in this town, the Temperance Hall, and a chairman appointed.

2812. Who was the chairman?—Either Mr. Murphy or myself. I may be wrong, but there was a chairman appointed and resolutions passed that there should be a memorial forwarded to the Executive with respect to these proceedings, and the manner they had been dealt with by the authorities.

2813. I believe the preparation of the memorial was entrusted to somebody who neglected it?—It was.

2814. I omit the name for an obvious reason. What took place in reference to the Donoughmore case, I suppose, increased the sensitiveness of the Catholics as to these displays?—Clearly; they said one party was returned, and the other not returned.

2815. I don't mean to go into the matter, but what took place had that effect?—It had—and a very decided effect.

2816. And, therefore, had an equally decided effect on their feeling as regarded the partiality of the magistrates?—Decidedly, it was one of the strongest cases.

2817. You have given us your opinion with respect to the reformation of the bench, and I don't intend to go back to it, but have all these things tended to give a significance to these drumming parties beyond what they would *prima facie* have?—Decidedly.

2818. Have they been increasing of late?—During the last five years they have been increasing.

2819. Is the increase greater during the last two years of the five, or during the first three years of the five years?—I cannot say of my own knowledge, I take little note of them, but sometimes they occur very often. I heard a police constable who had the means of knowing, swear at the inquiry in the police office, in the presence of the magistrates and of his officer, that they occurred as often as three times a week, and I adopted his words in the memorial. I adopted his evidence in the memorial—Constable O'Brien.

2820. I believe there is no doubt you have taken a prominent part in putting yourself and your co-religionists right with respect to this matter?—I did, and if the other party suffered as we have done, at the hands of Catholic magistrates or of a low Catholic mob, I, as a Catholic, would take the side of the Protestants and try to remedy such a disgraceful state of evil; I would indeed; I swear that distinctly. I hold the right of every man to express his opinion, and I hold that the Catholic should be punished when he commits a crime as well as any one else.

Cross-examined by *Sergeant Armstrong*.

2821. I would be glad to ask you whether you heard before the Sunday the memorial was signed—first I presume there were no signatures attached to it till that Sunday?—There were not.

2822. Had you heard, before any signature was attached to the memorial that the magistrates here—I mean the local magistrates—had complained of Captain Ball's animadversion on their conduct and had intended to take action?—I heard they had a meeting.

2823. You heard that?—I heard that they had a meeting.

2824. The object of which was to call the attention of the authorities?—No, I did not hear what the object of it was. I believe the object I heard was quite different, but they resolved themselves into a meeting I heard afterwards.

2825. I want to know did you hear before the Sunday on which the memorial was signed that the magistrates were complaining of what Captain Ball had said about them?—Oh, I did decidedly.

2826. And that they held a meeting on the subject?—Certainly not.

2827. Is the memorial here?—I believe it is. [*Memorial produced.*]

2828. Is it in your handwriting?—It is not.

2829. I suppose you got it written, you composed it?—I did, I dictated it; I did not write any of it.

2830. And upon what day did you dictate it?—I dictated it on Sunday morning.

2831. And there had been no pen put to it before?—None.

2832. Why did you not put the true date to it?—I did not put the date to it at all.

2833. It has after it "Dungannon, June 23rd, 1871"?—But that is not in my handwriting.

2834. There is none of it in your handwriting?—None.

2835. You dictated it, and I find it dated "Dungannon, June 23rd, 1871"?—We always date what we write on Sunday, on Saturday.

2836. But Saturday was the 24th?—Well, it should be dated the day before.

2837. What do you mean by the day before—why is it dated the 23rd?—Do you want me to say it was dated before the magistrates met—is that your object?

2838. I ask you to give any explanation for not putting the true date on it?—The only explanation is that that date is on it.

2839. The 24th was Saturday, and the 23rd was Friday—the 23rd was the day on which Captain Ball was examined?—And that was the reason for which the 23rd was put upon it.

2840. Why?—For the purpose of making it co-incident with Captain Ball's evidence.

2841. As if it had originated from his evidence?—No, certainly not.

2842. It was in aid of his evidence that the memorial was got up?—It was not.

2843. Was not it in consequence of the evidence he had given?—It was.

2844. Mr. Commissioner EXHAM.—In July, 1865, there were eighteen identified from the crowd that day?—Is it of the drumming party, or both?

2845. Oh, no?—Of the drumming party alone?

2846. Yes?—I believe that is so.

2847. Now we are at August, 1865—do you know was Mr. Coulson in the town in August, 1865?—No, he was not.

2848. Do you know were there any police in the town that day, except the ordinary force—had the police that had been drafted here for the occasion of the 12th of July been sent away?—Oh, I think so.

2849. Was there any crowd at all or any drumming until it became dusk or after dusk in the evening?—It was just about twilight—I should say about twilight.

2850. Did you observe any people leaving the town that evening, the townspeople, with drums or anything, or were the crowd that evening from the adjoining districts?—I believe there were townspeople along with them—joined them going out.

2851. Did you observe that yourself?—I did, although I could not tell you any of the names in it; for, strange to say, although I have a consciousness of knowing plenty of the parties at the wrecking of my house, the terror keeps people from taking note of them.

2852. Did you see any of the police close enough to that crowd to enable them to recognise the townspeople if they chose?—What I complain of is not that, for I believe that but for the police there would have been a serious collision at the corner; but that the Catholic people were, admittedly, watched in Shamblane and Irish-street up to ten and eleven o'clock that night, and the others, continually firing, out on the road, were not watched.

2853. Did you see the police near the Orange crowd?—It was their duty to be near them and look after them.

2854. But, did you see them near them?—There were no parties identified by the police at the time the riot took place outside the corner of the court-house—there were no parties identified then at either side; but at the time of the two camps, one here along the road and the other above, firing, one was subject to surveillance, and the other not.

Mr. Commissioner COFFEY.—You have made that excessively intelligible, but just answer the question.

FOURTH DAY
August 13.
Mr. John Hayden.

FOURTH DAY.

August 19.

Mr. John
Hayden.

2855. Mr. Commissioner EXHAM.—We have it in evidence that all the police force of the town of Dungannon is twelve ; well, were the twelve police watching the townspeople that night, while those two opposing crowds were firing those shots?—I say they paid them the most marked attention, passing through them and taking names.

2856. Mr. Commissioner COFFEY.—Do you mean to say that the whole of the twelve police were occupied up to twelve o'clock that night, and in the way you describe?—I believe they could have taken the names of the Catholics in an hour.

2857. Do you suppose, or is the impression on your mind, that the whole of the police force available in Dungannon were occupied exclusively in watching the Catholic party during the night?—I do not know whether the whole of them were, but I saw the Head Constable and Mr. Smith in the street, and Mr. Brooks in the street. The Catholic party offended nobody, and there was no insult to anybody, except the firing of the shots.

2858. Mr. Commissioner EXHAM.—It might have been considered a prudent thing on the one hand, that the police — *Witness*.—Should watch one party, and let another party fire away? If that is so I will give it up.

2859. Mr. Commissioner COFFEY.—You are following the train of your own thoughts — *Witness*.—Of my own outraged feelings, sir.

But although you are doing that, you must conform to the rules of a witness, and answer the questions that are put by the Commissioner, who is occupied in considering both sides of the question.

2860. Mr. Commissioner EXHAM.—My duty here I will endeavour to discharge to the best of my humble ability, irrespective of either party, and that is, so far as I can, to do justice to all sides. Is it what you complain of, that the police did not follow the country crowd, or that the police were not divided, and half, say, going after the country crowd, and half watching the town crowd?—I do not complain of how the police were arranged. Their own arrangements were their own business completely, and it is for them and those who commanded them to do it. How can I tell what the police should do?

2861. Now, could you tell me about how many people in the town crowd were collected at this operation of digging up of paving stones, and making preparations for the expected attack on them?—At first there was not so many. The people commenced it at first, and they did not become collected until afterwards, and the crowd got greater the further the evening proceeded.

2862. Can you give me an idea of about how many were in the Orange crowd that kept firing on the road down near the railway bridge, in defiance, this way?—I do not think perhaps above 100. Perhaps there were more, but I should say perhaps about 100, if so much. I give them as it strikes my mind.

2863. About what hour was it that Mr. Brooks came on the scene?—I think it was soon after the shots commenced in Irish-street in reply to the shots of the others.

2864. Mr. Brooks lived close at hand?—Mr. Brooks lived down at Miltown, very near where the Orangemen started from.

2865. You stated, with regard to those persons sent forward for this transaction of the 7th of August, that Mr. Coulson was the magistrate who heard the cases and committed them?—Yes.

2866. And was that on the ordinary petty sessions day?—No, sir.

2867. Was there a special session?—He gave notice. I think it was on a Monday evening there was notice given. Some of the parties were served on Monday evening, and they had to attend at ten o'clock the next morning to hear the evidence against them read.

2868. And were the summonses signed by Mr. Coulson?—I think so.

2869. And did Mr. Coulson come here as the

resident magistrate specially to do that?—I believe so.

2870. And he then took the informations, and sent the parties forward?—He did—all except one, whose identity there was a doubt about.

2871. And I believe there was a second identified afterwards, and he was sent forward too?—No ; I believe there was one whose identity was doubted. He was five or six miles away, and he refused to give bail—one of the Catholics—and the policemen changed their mind about it, and he was let out.

2872. With regard to this examination on the 10th of May—that was the day Mr. Stanley made the observation?—It was.

2873. In point of fact, was not there a public examination on that day?—There was.

2874. And did you hear the magistrates come to the conclusion to send up a case to the law adviser for his opinion?—I did.

2875. And was it after that that Mr. Stanley mentioned this matter?—Before it, sir.

2876. Before it?—Before it ; and it seemed a mere humbug sending up an opinion with one leg taken from under it.

2877. You mean about the answer, but I am talking of a different thing?—Oh, are you?

2878. You know Mr. Stanley stated that he would not be a party to — ?—That was not the 10th of May ; that was the 26th of April when that came on ; that was a fortnight before it.

2879. Do you recollect on the 26th of April, when that case was called on, was the case asked to be adjourned?—I have heard that stated, but that is not my memory of the case, because there were two classes of cases. The case of Houston's people might have been brought on and asked for to be postponed—that is, the parties at Houston's house. But we were interested in the affair of the breaking of the chapel windows, and it was in reference to that that I —

2880. They were both the same night?—Yes.

2881. Do you recollect that the parties were charged by the police on the 24th or 26th of April, and that an application was made on the part of the attorney defending those men to have the case postponed?—That may be, but it is not my memory of it.

2882. And is it your memory that it was on the 26th that Mr. Stanley made use of that observation?—Oh, yes ; I have no doubt about that.

2883. Mr. Commissioner COFFEY.—Can you tell me from your own knowledge when were the petty sessions after the 7th of August?—They are every fortnight on a Monday.

2884. Is the petty sessions book in court—I want to ascertain when the next court of petty sessions was held after the 7th of August?—It could not have been more from the special sessions Mr. Coulson had here than five or six days till the regular sessions, because my memory is that it was both Tuesday and Wednesday that he heard the case ; and then, as a matter of course, the case occurred before the Monday previously, and could have been brought up at that petty sessions if it were so, or must have been brought up on the next Monday.

2885. Were you in attendance here at the petty sessions that were held next after that?—I do not recollect that I was, but I know that I was going in to give bail for these people that morning, and I was put out by Mr. Coulson.

2886. There were none of the magistrates sitting there?—Not one.

2887. He was sitting by himself, and whatever he did he did on his own responsibility—that is pretty plain. I want to know when the next petty sessions were held after the 7th of August, and what magistrates were in attendance?—I do not know.

Mr. *McLaughlin*.—The book will show that.

Sergeant *Armstrong*.—The 7th of August happened to be itself a petty sessions day, and the first petty sessions after that was the 21st, and the magistrates attending were Mr. Stanley, Mr. Brooks, Mr. Lyle, Mr. Hamilton, Mr. Burgess, and Mr. Nicholson.

Mr. Commissioner EXHAM.—What is the exact date of the entry in the Petty Sessions Book, or is the transaction of Mr. Coulson's recorded in that, sending them forward for trial?

Sergeant *Armstrong*.—The entry is on the 16th of August.

Mr. Commissioner COFFEY.—What is the entry?

[Sergeant *Armstrong* read the entry.]

Mr. Commissioner COFFEY.—What I want to ascertain is this. How many constables were there who gave informations on that night, to see what they were doing. In addition to that, let me know is there anybody presiding or anybody at sessions that day, the 16th of August, but Mr. Coulson.

Sergeant *Armstrong*.—No; he acted altogether by himself. FOURTH DAY.

Mr. Commissioner COFFEY.—Then, he acted on the 8th of August and on the 16th by himself?

Sergeant *Armstrong*.—Just so. And you will perceive that the complainants are the head constable and sub-constable.

Mr. *McLaughlin*.—I suppose you will allow our people to get this?

Sergeant *Armstrong*.—Oh, yes; these are common property.

Mr. Commissioner COFFEY.—Just hand that to the Registrar.

[The book was handed in].

August 19.

Mr. John
Hayden.

Mr. *James McCann* sworn; examined by Mr. *McLaughlin*.

Mr. James
McCann.

2888. You live in Dungannon?—Yes, sir.

2889. What is your business?—Cooper by trade.

2890. Now I suppose you have lived here all your life. What age are you?—About 25 years of age.

2891. Were you born here?—Oh, yes, sir; I was born in the town and my father before me.

2892. Twenty-five I believe you said you were?—Yes; I might be more. I am not quite certain.

2893. It is not the slightest matter. Do you know this man called Dowse? I suppose you heard of him?—I heard of him.

2894. Do you remember the night that they burned something that was intended to represent him in effigy?—I do, sir.

2895. Did you see the people that were burning him that night at all?—See any of them?

2896. Yes?—I saw them coming down from the Windmill-hill, on up Scotch-street.

2897. I suppose, in the meantime, they would cross the railway?—Yes, sir, they would have the railroad bridge to cross.

2898. Did you hear any shots that night?—I did, sir.

2899. Did you see any guns?—I heard several shots.

2900. Did you see any gun on anyone's shoulder?—I seen a gentleman coming up Scotch-street before the mob, and it was either a gun or a stick he had on his shoulder. I could not see which.

2903. Did you know who this gentleman, as you somewhat liberally call him, was?—Yes, sir, I did.

2904. Who?—Mr. George Moon.

2905. Is that the gentleman who is the owner of the hotel which Mr. Hughes occupied at the time of the wrecking?—No, sir, brother to him.

2906. Was there any drumming at all, so far as your ears advised you of the fact, at that time?—Yes, sir, there were drums coming up Scotch-street at that time.

2907. Did you see the drums or did you only hear them?—I was not that close to them.

2908. But you heard them?—I heard them.

2909. Do you know Mr. Nicholson the magistrate?—I do, sir.

2910. Do you see him in court?—I do, sir.

2911. You are not frightened?—No, sir, not a bit.

2912. Did you see him that night in Church-street?—Not on that night.

2913. Do you recollect one night when there was a drumming party coming up Church-street, seeing Mr. Nicholson?—I do, sir; that was the night they returned coming from Lisburn.

2914. And that was rather a troublesome night here in town, I believe?—It was, sir.

2915. Was there any firing of shots or was it only drumming?—There was drumming, and then there was stone-throwing, commencing at the head of Irish-street, where they crossed to Union-place, to where the Orange lodge was kept, and the policemen very kindly escorted the Orange party into that place.

2916. And did you see the police arresting anyone that night?—I did not.

2917. And was there any number of the police that night?—About ten or eleven.

2918. Were they going in small numbers or beating drums?—Beating drums.

2919. Union-place is a very narrow gorge?—Yes, very narrow.

2920. Did the police accompany them further than Mrs. Magill's corner?—I think the policemen drew up to keep the opposing mob back.

2921. Do you know whether anyone was arrested of that side?—I did not know of anyone.

2922. Did you hear of anyone being arrested?—I did not, sir.

2923. Was that the night you saw Mr. Nicholson?—Yes, sir.

2924. Did you see him anywhere except in Church-street?—Yes, sir; I seen him coming up Church-street that evening.

2925. Does Mr. Nicholson reside in the town?—He does not, sir; he lives three miles out of it.

2926. He is a well-known man here?—He is, sir.

2927. I suppose, from time to time, you have heard those drumming parties?—Yes, sir; I live in a locality of the town that they are always marching up and down.

2928. Mention it?—Perry-street, opposite where Captain Ball had his lodgings.

2929. Were you living there when they stopped to play there?—Yes, sir; they have done it repeatedly; more so since he came to live in it, until he left it.

2930. Don't you think that shows some pluck on their part? Now, what sort of people generally take part in those drumming parties—are they farm servants, or working people from the town, or mill workers, or all those people put together?—Oh, they are all the working class in general.

2931. You are not a master-cooper, I take it?—No; my father and I work together.

2932. And being as I take it a man in the way of business, an operative working here, you know the people pretty well here about?—Yes, sir, I do.

2933. Do you know Colonel Knox?—I do, sir.

2934. Now, everybody knows Colonel Knox?—There are not many that does not know him.

2935. And he is a straightforward courageous plucky man, is not he—no doubt of it—and does he live in Ranfurly House?—He does, sir; that is where he stops when he is in town.

2936. Do you know a man of the name of Johnston, a servant of Colonel Knox's?—I do, sir.

2937. What is his Christian name, do you know?—Thomas.

2938. Commonly called Tom?—Yes, sir.

2939. Did ever you see Tom in a drumming party?

Mr. Commissioner COFFEY.—But was Colonel Knox there at the time? I should be sorry to be answerable for my servants.

2940. Mr. *McLaughlin*.—Did you see him there?—I did, sir, on one occasion.

2941. What time of the night was that?—It was on the anniversary of the 12th of July; they came up

FOURTH DAY.

August 19.

Mr. James
McCann.

my road and down past Mr. Dixon's entrance into Brooke-street where the lodge was kept.

2942. Do you know a man of the name of Abernethy?—I do.

Mr. Commissioner COFFEY.—Do you think it tends to any good purpose or legitimate object to go on with this line of examination? I will give you a ease in point. A servant of mine was in a Fenian procession, which was a decidedly illegal one, with all the accompaniments of such a procession; but it would be a very hard thing to make me answerable for that.

2943. Mr. *McLaughlin*.—Now, you never saw any servant of Mr. Stanley's in any procession?—I am not quite sure of his servants.

2944. Were you ever in court when Mr. Stanley was in court and Constable McGovern had summoned somebody?—I was.

2945. Who was the somebody?—William Walker, who works in Stevenson's firm in Church-street.

2946. Stevenson and somebody?—Stevenson and Company.

2947. Do you know a young fellow called McGuigan?—I do, sir.

2948. What is his Christian name?—Edward.

2949. Was that the day that young Edward McGuigan was examined against Mr. Walker?—It was, sir.

2950. Mr. Stanley was there?—He was present.

2951. What evidence was given in the presence of Mr. Stanley by young McGuigan, touching Walker and his expressions?—Sergeant McGovern had William Walker for using party expressions, and he did not hear the words expressed himself, but he had Edward McGuigan and William Woods, now in the Royal Artillery since, to prove that they heard the words expressed.

2952. What did McGuigan prove in the presence of Mr. Stanley?—McGuigan proved that he said that he heard Walker cursing the Pope in Church-street. I am not right sure whether it was in Church-street or not; and it would be somewhere in that locality of the town anyway.

2953. Did you hear him say that on his oath?—I did, sir.

2954. Did Mr. Stanley say anything about that?—Mr. Stanley said it was a very trifling thing to summon a man and fetch him up there for cursing the Pope, and he would dismiss it; and I heard him say that, and he sat there, and I sat there where that young lady is [pointing to a lady in the gallery.]

2955. Now, I apprehend that he did not speak for the bench generally when he said that—did he say anything?—He said, for himself; and the case was dismissed.

2956. How many were on the bench?—I could not say.

2957. Mr. Commissioner COFFEY.—When were those expressions alleged to have been used?—It might have been three years or three months ago.

2958. Under what circumstances were they used—was there a crowd of people there?—On the Petty Sessions day?

2959. When the words were used. On what occasion was it said they were used?—On the night that there was a riotous mob in some part of Church-street, or that direction, when this occurred; and the policeman was pushing up the crowd, and he heard those party expressions used, and he got those two young men there, and he brought them to prove the party expressions against Walker.

2960. Mr. *McLaughlin*.—And they were summoned as witnesses?—Yes.

2961. What did McGuigan say?—McGuigan said that he heard Walker curse "To hell with the Pope" either once or twice, and McGovern, the sergeant, referred to some Act of Parliament, and the magistrates said they did not pay much heed to him or the Act of Parliament, or that they had grounds for to fine him for cursing the Pope.

Mr. Commissioner COFFEY.—I am not aware of any Act of Parliament on that subject. What gives the matter gravity is this. It shows that in the midst of

a disturbed crowd or riotous assemblage, expressions were used that were calculated, and highly calculated, to give offence to other people entertaining different views. Of course it came within the common law, the use of language calculated to provoke a breach of the peace.

Mr. Commissioner EXHAM.—They have a very wholesome rule in Belfast, of fining either side 40s. and costs.

Mr. Commissioner COFFEY.—It would be a very ill-mannered thing, and coarse thing, to use those expressions, but they would be perfectly harmless, and the magistrates would be justified in treating them with indifference and contempt except they were used under circumstances that would give them an importance.

Mr. *McLaughlin*.—You know very well that there is in England a most elaborate code called "The Cursing Code," beginning so far back as the reign of Richard the Third, prohibiting cursing, and directing that so much shall be charged to an ordinary farm servant for the offence, and so on.

Mr. Commissioner COFFEY.—But this is a serious matter, Mr. *McLaughlin*.

Mr. *McLaughlin*.—I know some Acts of Parliament, about 200 years ago, that curse the Pope from beginning to end. But this was a drunken mob. This man was under the influence of drink, too, and he was summoned for both.

Mr. Commissioner EXHAM.—There is such an unfortunate set of fools in Belfast that I believe they furnish a very large income by paying their 40s. on both sides. Give us the Petty Sessions Book of that day.

Sergeant *Armstrong*.—There were two or three charges on the same day. In one case Joseph Burns is the defendant, and the one after that is this person, William Walker; and the magistrates were Mr. Lyle, Mr. Newton, and Mr. Stanley. Joseph Burns, of Dungannon, is the first defendant, and the charge against him is that on the public streets of Dungannon, on the night of the 24th of July, 1869, he was disorderly and used party expressions; and he is ordered to find bail, himself in £10, and two sureties in £5 each, to keep the peace. Then there is the same charge against William Walker. Witnesses, William Woods and Edward McGuigan. Like offence. Dismissed.

2962. Mr. *McLaughlin*.—That case of Walker was dismissed, in respect of which proof was given of the words "to hell with the Pope," or words to that effect?—Yes, sir.

2963. Sergeant *Armstrong*.—And I suppose the same expressions were attributed to the other man at the same time. Do you recollect him?—I do not, sir.

2964. Mr. Commissioner EXHAM.—You say that since Captain Ball came to live at Perry-street, they have been constantly drumming outside his place?—Yes, sir; they would make a bigger stop for the door of the house Captain Ball had his lodgings in, just opposite, and they would make more of a halt there, than they would since or before.

2965. Tell me, how long would they stay drumming outside Mr. Ball's?—They might stop a few minutes, and give it a double roll.

2966. Was the evening the general time of that performance?—Indeed, sir, I would hear them at all hours; some evenings from six o'clock, and some ten and half past ten at night.

2967. And did you see them ever interfered with by the police on those occasions of playing before Captain Ball's?—I never seen the police doing anything with them, only marching along side them.

2968. Am I to understand you now that you have seen them frequently drumming outside Captain Ball's house, and the police walking alongside?—They walked and beat more drums along Church-street during the time Captain Ball lived there than since.

2969. Do you mean to tell us that while they were standing beating drums in this loud manner opposite Captain Ball's, you saw the police escorting them, or standing alongside of them?—I could not say that I seen a policeman on that occasion.

2970. How often have you seen them doing that within the last two years—since Captain Ball came?—I seen them on several occasions—some nights twice or three times a week up it.

Mr. Barry.—Captain Ball was only resident there about four months.

2971. Mr. Commissioner EXHAM.—Am I to understand that it was wherever Captain Ball lived?—No, sir; they came up the street that often.

Mr. Joseph M'Mullan sworn; examined by Mr. M'Laughlin.

2974. Your Christian name is Joseph?—It is.

2975. And you live in Dungannon?—Yes.

2976. And I believe, fortunately or otherwise, you are a Catholic?—I believe I am.

2977. And you have lived here since you were born?—Yes.

2978. And you would know a drumming party if you heard the noise they make?—I would, I think.

2979. I believe they are very common here?—Well, they are.

2980. Do you know a young fellow of the name of Kelly who was examined here to-day?—I do.

2981. Do you know a man, who is no longer young, of the name of Dowse, who was burned in effigy some time ago?—Well, I do not know him, but I have heard of him.

2982. Do you remember the night when he was burned in effigy?—I do remember it.

2983. Did you see the burning throughout, or were you close to it?—I saw it from a short distance.

2984. From what distance?—Well, I could not exactly say.

2985. Were you with Kelly?—Yes.

2986. Now, did you hear any drumming that night, as well as you recollect?—I do not remember indeed.

2987. Now, there is another thing you might remember, possibly. Did you hear any shots fired that night?—I did.

2988. Where were you when you heard the shots being fired?—I was on the Windmill-hill.

2989. How near were you to the effigy at that time?—Well, I could not say about the effigy, because I could not see it.

2990. The Windmill-hill is, I suppose, an extensive place?—It is.

2991. And you might be at one part and allow sufficient space to burn the effigy at another part without being near it?—No; I saw a crowd—

2992. And you had sense to keep clear of it?—Yes.

2993. You saw the blaze?—I saw the smoke, but not the blaze.

2994. How did you know shots were being fired—did you hear the whistling of the balls, or anything?—I heard them passing overhead.

2995. I suppose you thought that preferable to their passing at a lower level, about five feet from the ground?—Yes.

2996. Did you hear many of them?—No; not many at that time.

2997. At that time. Were you in the open part or the trees?—Under the trees.

2998. At what time of the night was it?—Well, I should say it was between eight and nine.

2999. I believe it was in the month of February, was not it?—I cannot say as to that. I am not certain.

3000. Could you say how many balls you heard whistling about you in that way?—I could not.

3001. And you do not know at whom they were fired, or whether they were fired at anybody?—I do not.

2972. Sergeant *Armstrong*.—Two or three times a week for four months?—I did not say that; but these last few years they frequented going up that street once to three times a week.

2973. How often did you see them stopping to give the double roll at Captain Ball's lodgings?—I saw them on two or three occasions. I do not exactly mind the time that they remained there.

FOURTH DAY.

August 19.

Mr. James
M'Cann.

Mr. Joseph
M'Mullan.

3002. What did you do when you heard that?—I thought it was better to leave.

3003. And I suppose you did leave?—Yes.

3004. Do you remember any other disturbance that night in the town?—Well, I do.

3005. Do you know where Mr. Moon's hotel is?—I do.

3006. At the bottom of Scotch-street?—Yes.

3007. And I suppose you know Mr. Newton?—I do.

3008. Now, do you remember seeing Mr. Newton about that place that night—were you near Mr. Newton when he was struck?—I do not remember his being struck. I heard that he was struck, but I did not see it done.

3009. But do you remember being near Mr. Newton at Moon's corner?—I remember seeing him.

3010. It is fair to ask you what he was doing?—Well, I could not say, because I did not pay much attention to what he was doing.

3011. Were you going home, or what?—No; there was a great deal of noise, a great deal of excitement.

3012. Drumming?—No; there was a great deal of shouting, stone-throwing.

3013. Did all the crowd appear to be of one kind, or was there another party?—There appeared to be two parties.

3014. Did you observe any police about there at that time?—Yes, I saw a few.

3015. How many?—Well, I cannot recollect how many.

3016. Did you see half a dozen, or eight?—Well, I am sure there was.

3017. Eight police?—Yes.

3018. Or ten?—I am not certain about ten.

3019. Did you observe any of them arrest anyone?—I did not. I did not see anyone arrested.

3020. You never heard that anyone was arrested?—No.

Cross-examined by Sergeant *Armstrong*.

3021. I suppose you went to the Windmill Hill to see what was going on out of curiosity?—Yes, out of curiosity.

3022. And a great many others went with you?—No, only two others—Kelly and M'Shaen.

3023. Did you hear the balls rattling through the trees?—Yes, I heard a few balls.

3024. How many?—Two or three.

3025. Did you see them?—No, I heard them.

3026. How did you hear them?—I heard the whistle of the ball.

3027. Were you frightened?—Well, I was at that time—not before it.

3028. And you went up to reconnoitre there what was going on?—No, I did not.

3029. Had you been at the burning of the tar-barrel when Mr. Dowse was returned for Derry—you were at that, and you subscribed to the tar-barrel?—Yes; I am sorry that I did so since.

FOURTH DAY.

August 19.

Mr. Patrick
Downey.Mr. Patrick Downey sworn; examined by Mr. M^cLaughlin.

3030. Now, do you remember the night when they burned in effigy a man of the name of Dowse?—I do.

3031. As the Sergeant is anxious with reference to the general appearance of the effigy, did you see it?—I did.

3032. What shape was it generally?—Oh, they burned a tar-barrel through the streets just.

3033. It was the blaze, I take it, you saw?—Certainly.

3034. And you did not see the effigy itself except blazing—but after the effigy had blazed?—You are referring to the night that Dowse was burned.

3035. Just so?—Oh, yes, I did.

3036. But you did not see the effigy itself while it was being burned?—No.

3037. But after the burning of the effigy, and later, did you see any of the parties coming from the direction in which, as you believed, the effigy had been burned?—Yes.

3038. Had they drums?—They had, going down and up.

3039. Where do you live?—At the foot of Scotch-street.

3040. That would be on the direct road from the centre of the town, towards the hill where the incineration took place?—Exactly.

3041. You saw them going down with drums?—Yes.

3042. Were there many of them?—Oh, there was a large number.

3043. Did they go down openly in the public street?—Yes.

3044. Now I suppose any policeman there that had the ordinary use of his senses could see and hear them?—Could not miss.

3045. Did they go into the top of Scotch-street do you know?—Yes; I heard them past my own door.

3046. Would there be any difficulty in hearing, in the police barrack even, the noise of a drumming party there?—Not a bit.

3047. How long was it from the time you heard them passing down and playing? You saw them too, I believe?—Yes.

3048. How many of them were there?—I could not tell you.

3049. One hundred?—I could not tell you.

3050. Any drums?—More than one.

3051. Had they the effigy with them at this time?—I did not see it.

3052. How long were they away until they came back again?—They were over an hour, I think.

3053. Before they came back did you hear any shots?—I did, several shots.

3054. As if from guns or pistols I suppose?—Yes.

3055. From what direction did the shots appear to proceed?—From Windmill-hill.

3056. Whereabouts, now, with reference to Moon's hotel do you live?—I live at the first house, the second house but one; the second house from the foot of Scotch-street.

3057. That would be nearer the railway than Moon's premises?—Yes.

3058. Is it on the same side with Moon's premises?—No.

3059. On the opposite side?—On the other side.

3060. After passing your house had they drums with them coming back?—I could not say. I heard the shots of firing coming up the street, and seen the blaze.

3061. The flash of the discharge?—Yes.

3062. How far was it from Moon's that that took place?—It was a couple or three perches below Moon's house.

3063. Rather more than the length of this court-house from the back to the outside, or front door, below Moon's?—Oh, far more, the length of the market-house—more.

3064. Did they continue firing?—I do not think they fired after they came up to my house.

3065. Did they throw stones after?—They threw stones. Stones were coming rattling up the street as they were coming. Up past my door.

3066. There was another party there, I suppose, at that time?—There had been a party over at the Fowl Market.

3067. Were those what is called the Catholic party?—But as the Orange party were coming up that party retreated away up.

3068. And they threw stones as they went?—I did not see them throwing any.

3069. But the stones came from that direction?—The stones came up from the Orange party.

Mr. Commissioner COFFEY.—As I understand you, as the party moved up the street they commenced throwing stones after the firing of the arms had ceased.

3070. Mr. M^cLaughlin.—Did you see any police there at all?—I did not remark any.

3071. Do you know Mr. Courtenay Newton?—I do.

3072. Did you observe Mr. Courtenay Newton there?—I did not; I was not out of my own house that night. I did not see him there at all.

3073. I need hardly ask you whether these displays are dangerous to the peace?—Well, I am sure they are.

3074. And that they should be put down?—I am certain.

3075. And do you think that if the magistrates were in earnest they could be put down?—I think they do not want.

Cross-examined by Sergeant Armstrong.

3076. Who were throwing the stones at the fowl market?—I do not know that any stones were thrown there. I was in my own house at the time.

3077. And you heard shots when the party were coming up?—Yes; seen them.

3078. And when they came to your house they did not fire shots after that?—No.

3079. Were there any stones thrown at the Orange party?—I did not see them.

3080. What stones did you see?—I heard stones rattling up past my own door, and I heard there was a man hit in Joe Fox's door, that is next door to me.

3081. Was there anything like a crowd opposing this effigy party?—I could not tell. There was a lot of fellows in the fowl market.

3082. What sort of fellows were they?—I could not say.

3083. Were they the Catholic party?—Yes; certainly.

3084. Had they the protection of the wall?—There is a wall there surely.

3085. They were behind the wall—did they sling any stones over the wall?—I did not see it. I think they ran away up the street sooner than they could throw any stones at the Orange party.

3086. Were the Orange party throwing the stones up the street?—Yes.

3087. Throwing them before them?—They hit a man at Joe Fox's door.

3088. Did you see it?—No.

3089. Were they flinging them up in a volley?—They were firing them at my house, or I do not know whose house it was.

3090. Did they break any panes of glass?—No, for I had up my shuts.

3091. Was there any damage done?—Not to me.

3092. Who was it retreated?—The Catholic party.

3093. And did the other party retreat up after them?—No; they followed up.

3094. Where did they run to?—They went on up the street past my door.

3095. Did you never see this effigy?—No, I did not.

3096. Did you see Mr. Courtenay Newton on the street at all there?—No; I did not go out I say.

3097. Did you see him throwing stones?—No; I was not out; he might for me.

3098. Did you see Colonel Knox throwing stones there?—He might for me; I was not out; and I did not see him at all.

3099. But he might have been throwing stones?—I did not see him, and I do not know what he was doing.

3100. You did not see the effigy?—I did not.

3101. Do you know any man that ever told you that he saw it—for I am beginning to think that it was all a humbug?—I heard that such a thing was done. That is all.

3102. Could you tell me the name of any man that ever told you that he saw it?—I could not.

3103. For I am beginning to think that there was nothing at all of the kind?—I could not say whether there was or not.

3104. At the time you saw the party going down towards the Windmill Hill that night?—Yes.

3105. Before you heard the noise?—Yes.

3106. Had they a tar-barrel with them?—I did not see.

3107. Had they anything with them in the way of a figure?—I did not see anything.

3108. You did not see a man stuffed with straw?—No.

3109. Or saw-dust?—No; I did not see a figure at all, only living figures.

3110. Did you see Mr. Newton going with them?—I did not.

3111. And do you think as a man of common sense that there was any effigy?—Well, I believe there was.

3112. What is an effigy?—Why, an effigy is got up to represent a man.

3113. With clothes?—Yes; to burn him in derision.

3114. Did you subscribe to the tar-barrel for Mr. Dowse's success?—I do not think I did, because I was opposed to that entirely myself.

3115. But that is the very reason you might have subscribed to it, for Dungannon is an extraordinary place?—To the best of my recollection I did not.

3116. Are you sure?—I think I did not, as well as anyone could mind, because I was opposed to rejoicing for Dowse entirely.

3117. Will you swear you did not subscribe for the tar-barrel for Dowse's return?—I do not recollect that I did.

3118. Did you ever subscribe to any tar-barrel in Dungannon?—Yes.

3119. For what?—When there was a wedding in the town I would give a penny or so.

3120. Did you ever see a bonfire up in the Diamond?—Oh, I did.

3121. When?—I saw them on that night when they were rejoicing for Dowse.

3122. And who were burning that—his admirers?—Yes.

3123. Did you go up to see it?—I did.

3124. And were you in close to it?—Yes.

3125. And did not you give three cheers for Dowse?—I did not.

3126. And were not they cheering for Dowse?—No.

3127. And they did cheer for Dowse?—Yes.

3128. And that will bring it to your mind. Did you go up to see the light of your own fire?—I did not.

3129. There was another burning in the Diamond. Did you subscribe to the one in the Diamond?—I did not, I think. I am nearly sure.

3130. And did you stay until it all burned out in the Diamond?—Well, I think I did.

3131. Was there a great crowd?—There was.

3132. Were you very offensive to the Protestants?—Not a bit. I was not, I know.

3133. Was anybody else?—Well, I heard some one cheering against Colonel Knox, but it was very slight. I heard others discountenance that.

3134. It was, generally speaking, a good-humoured gathering?—Yes.

3135. A bit of fun, a lark?—No shots fired.

3136. And no serious disturbance?—No.

3137. No harm to anybody?—Not a bit.

3138. And I suppose if you saw danger you would go into your own house as fast as you could?—Well, I might not. I do not know about that.

3139. Mr. *M'Laughlin*.—I believe Mr. Dowse is a native of this place?—Yes.

3140. And did you hear then, the same night, cheering for Johnston of Ballykilbeg?—Yes.

3141. Sergeant *Armstrong*.—Are you a native of this place?—I am here for thirteen years.

Mr. Commissioner COFFEY.—Mr. Dowse is a public man and member of parliament, and must bear the consequences of that position, and the other parties are as little to blame for burning him in effigy as these for cheering for his success. They were both very harmless in their way, and there was nothing in the wide world in them to call for a commission of inquiry, except that people seem to celebrate demonstrations of this sort here in a very dangerous way by firing shots. I think these two demonstrations, taken by themselves, one to glorify the success of a public man, and the other to turn him into ridicule, are of no consequence to the community.

Mr. *M'Laughlin*.—I ask the Commissioners to consider them with the surrounding circumstances.

Mr. John O'Neill sworn; examined by Mr. *M'Laughlin*.

Mr. John O'Neill.

3142. Where do you live?—I stop in Scotch-street.

3143. What is your business, if you please?—I work at the carpenter business.

3144. Do you remember the night of the burning of the effigy?—I do, sir.

3145. Do you remember seeing a party going down with drums?—I do not remember seeing them go down but I saw them coming back.

3146. Did you hear any shots fired?—Oh, yes, on the hill.

3147. Did you hear any shots fired which, judging from the sound, seemed to you to be coming back from the hill?—Well, I heard shots but I could not say what road they came.

3148. Did you see any stones thrown that night?—Yes.

3149. Where?—Up by the house that I stop in.

3150. Whereabouts is that house?—The third house down from the cross that goes down Carr's-road; the third house down from the corner.

3151. Is that on the opposite side of the street to Moon's?—Yes, Moon's is there, and it is down here.

3152. Is it stones or shots they were firing or throwing at that time?—Yes, it was stones. I heard the rattle against the shuts.

3153. The Fowl Market looks upon that road?—Oh, yes. They were a good distance beyond that.

3154. Were there many stones thrown?—Well, I could not give any numbers, but I heard a great many rattles against the shuts.

3155. Do you know whether any one was arrested?—Not to my knowledge.

Mr. Commissioner COFFEY.—There was no one arrested up at the Diamond when they were celebrating the success of Mr. Dowse. There was no mischief done here, or anybody hurt. The only mischief in the transaction was the firing of shots, which every man of reasonable mind should discountenance to the utmost of his power; but these two things are

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August 19.

Mr. John
O'Neill.

completely apart from the general complexion of the transactions that you have brought before us. Have you not made as much out of this as is capable of being made? There was a demonstration on the hill. There were shots fired. According to some of the evidence the fire-arms were loaded with ball. Then they threw stones when they came down to the street where you were engaged in a very disorderly manner a few nights previously, in burning a tar-barrel, shouting and cheering and making a commotion. But that had nothing to do with the general question of drumming parties which are calculated to excite animosity, and have been kept up as a system of terrorism and alarm to people.

Mr. *McLaughlin*.—The distinction between the two is this. No doubt no simple demonstration of that sort, however inconvenient in many respects, is, considered by itself, and isolated from everything else, wrong; but everything becomes wrong or right by reason of its surroundings, and very much depends on the answer to the question—*Quo animo* it was done? If the simple burning of a tar-barrel for Mr. Dowse in the Market-square was to be compared with the simple burning of the effigy of Mr. Dowse in another place, it would require an aesthetic mind to make out the difference between them. But the evidence seems to indicate this, that on the occasion of the burning of the effigy the shots created very great confusion of feeling from the fact of Mr. Johnston's name being mentioned, as well as the stone-throwing; and it was not at a distance from any crowded thoroughfare, but in a crowded thoroughfare, and against inhabited houses and against the windows of them, that the stones were thrown.

Mr. Commissioner COFFEY.—What, after all, is it but a street row, created by the prior demonstration a few days before? It has nothing to do with the general character of your case. In my humble judgment the supplying of evidence now that the facts are known of this particular transaction, rather weakens the general case than supports it. You have established by abundant evidence that the complexion of this demonstration upon Windmill-hill is worse than the other in the facts, and in the matter that there were fire-arms there used, which was very improper.

Mr. Commissioner EXHAM.—Very improper if they fired them with ball—highly improper.

Mr. Commissioner COFFEY.—Surely we would never be sent here to investigate into this, if you choose to call it so, exceptional riot.

Mr. *McLaughlin*.—All I can say is this. I feel the force of the Commissioners' observations so far as relates to duplication and triplication of evidence on one particular point; but the Sergeant, to some extent, threw discredit on the first witness that deposed to the shots, and examined him to show that it was all imagination.

Mr. Commissioner COFFEY.—We have got quite sufficient evidence here to prove *prima facie* that there were fire-arms used, and unless the Sergeant brings credible persons to say that they were there during the whole period, and that no fire-arms were used, and that it is all a delusion, that evidence will stand good. I do not suspect that he will do anything of the sort.

Sergeant *Armstrong*.—I do not say anything of the kind.

Mr. *McLaughlin*.—I have two or three other witnesses to prove the same things, or parts of the same transactions, but I will not produce them, in deference to the Bench. Now it being fifteen minutes from the time to adjourn, I hope you won't ask me to go on.

Mr. Commissioner COFFEY.—Everything that you bring before us pertinent to the subject of our inquiry, namely, the existence of these drumming parties, and the effect they produce upon the minds of a portion of the inhabitants and of the community at large. I do not care how much you duplicate or triplicate evidence upon that. I think it is in the last degree

important. But these two little transactions I declare I think they are not of much consequence.

Mr. *McLaughlin*.—If a man does the best that occurs to him to do in the honest exercise of his judgment, he may sometimes err, but he cannot blame himself. That is my condition. But I think I have abstained from bringing in very much extraneous matter to-day.

Mr. Commissioner COFFEY.—It is only because the last two or three witnesses were running all in the same groove.

Mr. *McLaughlin*.—It is only because the Sergeant seemed to throw discredit on the statement of the first.

Sergeant *Armstrong*.—Only on the balls.

3156. Mr. *McLaughlin* (to witness).—How long have you been living here?—Twenty or thirty years.

3157. Of what religion are you?—Roman Catholic.

3158. Are these drumming parties taken part in—I believe they are—by one side of the town only?—Yes.

3159. I believe they are regarded with dissatisfaction by you and by your co-religionists?—Yes.

3160. And they are dangerous to the public peace?—Yes; I believe so.

3161. And they ought to be put down?—Yes.

3162. And you think if the magistrates were in earnest they could be put down?—I think the magistrates could put them down.

Cross-examined by Sergeant *Armstrong*.

3163. You are a carpenter?—Yes sir.

3164. And do general work in that way?—Yes sir.

3165. And did you ever make a staff for an Orange flag?—No sir.

3166. And I believe you live on the best of terms with your neighbours—so I hear?—Well, I think so.

3167. And with Protestants and Catholics?—Well, I would go as far for some Protestants as Catholics.

3168. That is so from what I have heard of you. Now, how would you, as a sensible man, put down the drumming parties?—I am no lawyer.

3169. But you are a man of sense?—I can give you my opinion, but no more.

3170. It is easy to say people might put them down?—I am not able to go into those subjects. All I can say is, that I believe if I was creating the same I would be put down.

3171. Would you tell me what you think ought to be done to the drumming parties?—I would not pretend to say that.

3172. Mr. Commissioner COFFEY.—Do you think that the magistrates would take you in hands, and deal with you, and think you a very troublesome, obnoxious fellow?—Yes; and the police both, sir.

3173. Sergeant *Armstrong*.—You do not think you ought to be shot dead on the spot?—Certainly not.

3174. What would you like to have done to you in your zeal for the public peace—what would you like the police to do to you?—I believe it is the police's duty to keep off anything that will raise disturbance.

3175. That is a truism in the abstract. But supposing there is a sudden burst of Orangemen into the town unexpectedly, and that the Catholics hear the drums coming, and crowd to the corner with stones in their fists, and that there is great danger of a row, don't you think it is a very good thing of the police on a sudden to turn out and hinder them from breaking one another's heads?—It is their duty, I think.

3176. You know there are only twelve police ordinarily in Dungannon. Now, don't you think, to keep them asunder, it would be better for the police to stay stationary, and not to allow the Catholics to follow the Protestants or the Protestants to hunt the Catholics, but let one party disappear and pass away if it could?—That is the impression of the Catholics—that the others guard them.

3177. Do they guard them from being hurt?—Well, I could not say.

3178. Don't you know that the police are a very mixed body in the town?—Well, I do not know. I never got into those things.

3179. You could not give me any particular remedy for that state of things going on, except to be more severe?—Except if I understood the law I might.

3180. Have you been studying Mr. Brewster's letter?—Well, I might have read it.

3181. Law is very good if carried out?—Certainly so. I believe if each were dealt with properly there would be no rows.

3182. Give me any instance of where they were not dealt with properly to your knowledge?—I stated to you before that I was not a lawyer.

3183. Are you in the habit of attending petty sessions?—I used to be more so than I am this last while.

3184. You are not so regular as Mr. Hayden?—No sir.

3185. But were you ever at the petty sessions when any party case was tried?—I was at many a one.

3186. And how did they go on?—I believe they did not go on to my *pleasement*.

3187. Did your friends get the worst of it?—I have no friends.

3188. You will, perhaps, now?—I mean in this neighbourhood.

3189. Did you ever see an Orangeman sent for trial?—Oh, I did often.

3190. Surely the magistrates could not hang them—what more would you like to have done?—I am not finding fault; I would like to see men get justice.

3191. What ought to have been done that was not done?—I have stated my opinion before.

3192. Now, recollect as well as you can, and tell me any instance in which you think the magistrates should have done something different from or more than they did do?—I could not go into that sir.

3193. Mr. Commissioner EXHAM.—That is just what I would like, if you could give me any instance at all in which you thought that the magistrates leant heavily on one party and lightly on another?—It is the impression of everyone that ever I, nearly, hear speaking.

3194. That I have very little doubt of myself. I want to know can you give me any instance, can you tell me any case within your recollection or knowledge, any case of any single individual or number of individuals, brought up at the Roman Catholic side in which you thought the magistrates acted unfairly in giving them too much punishment, or any case in which the other party were brought up and the magistrates let them off when they ought to have given them punishment, or gave them too light punishment—can you tell me any single case?—Well, not that I was present at.

For, unfortunately, a prejudice, or I will not say prejudice but feeling, may go abroad, and it is our duty to see the foundation for it as far as we can, or the instances if we can.

3195. Mr. Commissioner COFFEY.—Have you ever been present when persons were brought forward for party business, drumming, and fifeing?—Well, I was, sir.

3196. Did you ever hear the magistrates from the bench denounce that conduct as calculated to bring disgrace upon the community, upon the town, and say that these things were intolerable, tending to annoy people of a different religious persuasion, and that they

ought to be ashamed of themselves for their conduct, and that it ought to be given up in the interests of peace, and order, and quietude—have you heard that stated from the bench?—I never did, sir, to my knowledge.

After a pause, Mr. Commissioner EXHAM said.—I have just been speaking to my friend Mr. Coffey, and it is only with a view, if I could, not unduly, to shorten this inquiry. I only suggest this matter to you, whether you think it necessary to have any more evidence on the shorthand-writer's notes, which hereafter will be published for the information of others as well as His Excellency, evidence of this fact that these drumming parties are eminently hurtful to the Roman Catholic party in this town, and eminently calculated if not put a stop to, to lead to breaches of the peace from time to time. What I have heard has only impressed it more on my mind; and I have heard the learned Sergeant, speaking on the part of his clients, the magistrates here, the very first day, denounce them too.

Sergeant *Armstrong*.—That is the universal feeling.

Mr. Commissioner EXHAM.—I only suggest to you whether it is necessary that we should have further evidence on a point on which my friend and I have not the slightest shadow of difficulty or doubt.

Mr. *M'Laughlin*.—The most practical proof of my perfect agreement with your views is this, that for the last three hours I have not offered any evidence with respect to that except in the examination of the last witness; and I think all the lay evidence as distinguished from professional evidence that ought to be given is all before you. I will then exercise my judgment, and, I hope, with proper caution, as to the extent to which I will use the police witnesses who are in attendance, and I think the occupation of the time of the Court by that will not be great.

Mr. Commissioner COFFEY.—We do not bind you at all.

Mr. Commissioner EXHAM.—Mr. Coffey and I have not the slightest objection—

Mr. Commissioner COFFEY.—And, further, if at any stage of the inquiry there is a witness that either party wish again produced they can do so.

Sergeant *Armstrong*.—With respect to the missing informations of 1869, Mr. Molony went by the train and no message has been received back from him, and it remains in uncertainty whether they are at his place or not. There is only one other depository and that would be the Law Adviser's office, and perhaps you would not think it irregular to allow your secretary to apply to him.

Mr. Commissioner COFFEY.—To morrow will be Sunday and Mr. Exham may, perhaps, have an opportunity of seeing the Law Adviser himself, and then he will cause a search to be made on Monday morning, and we may have a telegram here in the course of that day.

Mr. *M'Laughlin*.—With reference to the informations that are in custody of the registrar, I suppose if we wish to get copies of those we can?

Mr. Commissioner EXHAM.—Certainly.

Mr. Commissioner COFFEY.—Certainly you can.

Mr. Commissioner EXHAM.—The Law Adviser's opinion was given on the 25th of May, 1869. [Reads Law Adviser's opinion]. I see something here on it which may be of importance—"File sent to the Irish Office."

[Adjourned.]

FOURTH DAY.

August 19.

Mr. John O'Neill.

FIFTH DAY.

August 21.

FIFTH DAY.—MONDAY, AUGUST 21.

Mr. *George Moon* said.—Would you permit me to make a remark in reference to some evidence given here on Saturday last. My name is George Moon, and reference was made to me in the evidence of a party to the effect that I carried a gun or stick up Scotch-street before a mob on the night the effigy of Mr. Dowse was burned. That was proved on oath. I am here to vindicate—

Mr. Commissioner COFFEY.—It was not proved on oath. What was said was, that you were seen going up with something over your shoulder, and the witness could not make out whether it was an umbrella, or a gun, or a stick.

Mr. *Moon*.—If you take it that way, I am prepared to prove that neither of them is a fact.

Mr. Commissioner COFFEY.—If you think it desirable, Mr. *Moon*, you can by-and-by, when the proper time comes.

Mr. *Moon*.—I am prepared at any time to prove it by myself.

Mr. Commissioner COFFEY.—If you are prepared to make explanations, at the proper time come into the box.

Mr. *M'Laughlin*.—Just so. There is no man in the country that I would be more ready to listen to. (To the Court.)—What is the result of Mr. *Exham*'s effort to get the informations?

Mr. Commissioner EXHAM.—We received a telegram this morning from Mr. *Molony*, in which he says that he made every search and cannot find the informations, that he has not got them. He says they must either be with the clerk of the petty sessions, or they have

not been sent back from the Castle. I have taken steps that if they are at the Castle they will be forthcoming, and that as early as a search can be made this morning we shall have a telegram from the Castle, saying whether they are there or not. If they are they will be sent down. More than that we could not do.

Mr. *M'Laughlin*.—There being, in respect of the petty sessions clerk, a possibility of his having them, I think that, notwithstanding the delicate health of that gentleman, he ought to be here.

Mr. Commissioner EXHAM.—Certainly, if possible.

Sub-Inspector *Smith*.—Send for the petty sessions clerk to come immediately.

Sergeant *Armstrong*.—I understand that he is an old man, and not well. If some intelligent person were sent to take the trouble of searching among his papers—any active policeman—it would do.

Mr. Commissioner COFFEY.—If he is in the habit of attending to his duties at all, either with efficiency, or with inefficiency—if he is in the habit of attending the petty sessions court he might attend here and tell us from his own lips what he knows about the matter.

Mr. *M'Laughlin*.—I think myself, upon the whole, having regard to the fact that this is a petty sessions clerk, with no deputy, who does his work—

Sergeant *Armstrong*.—I think there is a most unnecessary fuss made. He ought to be here.

Mr. Commissioner COFFEY.—We have sent for him, and there is an end of it. We cannot spend a quarter of an hour longer about it.

Constable
Michael Drury.

Constable *Michael Drury* sworn; examined by Mr. *M'Laughlin*.

Mr. *M'Laughlin*.—I think, sir, perhaps it might be well—if you will allow me to make the suggestion—that this constable, being the first constabulary witness, should hear officially from the Court that nothing that he can say here can in any way operate to his disadvantage.

Mr. Commissioner COFFEY.—We are not going to inquire into the conduct of the constabulary at all. We shall hear him merely as a civilian—merely as any civilian witness that might be brought up. We pronounce no opinion upon their conduct.

3197. Mr. *M'Laughlin*.—(To witness.)—Where are you stationed?—At Strahan at present.

3198. In this county?—Yes.

3199. Were you formerly in Dungannon?—I was.

3200. Were you here in 1864?—No, I left this about November, 1856.

3201. I suppose, in this county, as in others, from time to time, according as the necessity arises, the men are shifted, that is, contingent parties come in and go away on the 12th of July, or any occasion of that sort?—Yes.

3202. Do you remember being here in July, 1864?—I remember being here on one occasion in July since I left this. I don't know what year it was in.

3203. Do you know who was Head Constable here in 1864?—I believe it was Fitzpatrick.

3204. Do you remember being here at the time of the July anniversaries when Fitzpatrick was Head-Constable?—On this occasion I believe it was Fitzpatrick; I don't know what year it was in.

3205. Do you remember whether it was the 11th or the 12th?—I came here on the evening of the 11th.

3206. Do you remember whether you had been required on duty for the town on the 11th?—No; but I understood on the previous evening from the Head Constable that I would be with a few men in the town on the next day, and I went to Coal Island.

3207. You were required at Coal Island?—Yes.

3208. Do you know who was left behind in your place?—Constable Davis.

3209. Did he belong to Dungannon?—He was stationed at Ternou Rock.

3210. About fifteen miles from this. Had he ever been stationed at Dungannon?—Not to my knowledge.

3211. How long were you stationed here?—I came to this district in January, 1848, and I left it about November, 1856.

3212. Mr. Commissioner COFFEY.—Then you were eight years out of Dungannon?—Yes.

3213. Mr. *M'Laughlin*.—Do you remember whether that was the day that there was some trouble opposite the house of the parish priest, Dr. Slane?—No, I do not; I have no knowledge of it.

3214. Did you take the names of any persons on that day at all?—No.

3215. At the time you were here, were there any drumming parties?—I never saw a drumming party in the town of Dungannon.

3216. Had you drumming parties in the neighbourhood?—Seldom, indeed.

3217. But I suppose you know that they are regarded as offensive to one class of the community?—Oh, there is no doubt whatever of it.

3218. What is your rank in the force—constable, popularly called "sergeant"?—Yes.

3219. Is it your opinion that these drumming parties are dangerous to the public peace and ought to be put down?—I have not a second opinion on it.

3220. Mr. Commissioner COFFEY.—What is your opinion—your honest opinion?—My opinion is that it is dangerous to the public peace and troublesome to the police themselves, by bringing them from one part of the country to another.

3221. Mr. *M'Laughlin*.—You are discovering that now?—

3222. Mr. Commissioner EXHAM.—He does not say that. (To witness.)—Is it only now you are discovering it?—Oh, these last twenty-five years.

3223. Mr. *M'Laughlin*.—You think they ought to be put down?—I do, undoubtedly.

3224. Do you think they could be put down if they were in earnest in Dungannon?—Well, that would be a matter of opinion.

3225. What is your opinion as an experienced man?—My opinion is that they could.

3226. I may as well ask you how would you do it?—By the co-operation of the magistrates.

[Not cross-examine.]

Sub-Constable *Patrick Colgan* sworn ; examined by Mr. *M'Laughlin*.

FIFTH DAY.

August 21.

Sub-Constable
Patrick Colgan.

3227. Where are you stationed now—at Dromore, in this county?—Yes.

3228. How long have you been stationed at Dromore?—Since the 2nd of September.

3229. What is your rank in the force?—Sub-Constable.

3230. Were you stationed at Dungannon for any length of time before you went there?—I was a year and five months here.

3231. Were you here on the 12th July, 1869?—I was.

3232. Were you on duty as a policeman on that occasion?—I was.

3233. In Dungannon?—Yes.

3234. Did you see the drumming party coming in in the morning?—I did.

3235. Were you the only policeman there when they were coming in?—No; there were Head-Constable Collins, and Constables Walsh and O'Donnell besides myself.

3236. Were there many of them?—There were, I think, about thirty or forty of the drumming party in the morning.

3237. Was there an extra force of police in Dungannon on that occasion?—There was.

3238. Were there any military here at all?—The lancers, and I think some other regiment.

3239. Were they playing music and beating drums that morning when they came in?—They were, when passing through.

3240. Through the town. Did you see was there another party opposed to them?—Yes, another party attacked them in the Fowl-market; they were throwing stones when we went down.

3241. Was this when they were going out in the morning?—Yes.

3242. Did you see if stones were thrown by one party at the other?—I did.

3243. By both parties at each other?—I did.

3244. Were any persons arrested at that time?—None.

3245. Did you know any of the persons whom you saw so engaged?—I did not; I was only here a couple of months at that time—from April.

3246. I believe at the foot of Barrack-street the police got between the two parties?—They did; first at the foot of Scotch-street, we kept between both parties and kept them from attacking each other, and we had to run through the drumming party to meet them again at the foot of Carr's-row.

3247. Among the force of constabulary so engaged, were there any men that had been stationed here for a good while?—There were.

3248. And who, I suppose, presumedly would know the people?—I don't know; they were a long time here.

3249. Do you know Mr. Newton, the magistrate?—I do.

3250. Did you see him there?—He was on the street that morning.

3251. Whereabouts was he?—He came down from Mr. Moon's in that direction at the time the stones were thrown, or after it I think.

3252. We have heard the name, and we may as well dispose of it—do you mean Mr. George Moon?—No; Mr. Moon that has the hotel.

3253. George Moon is the brother of the gentleman who keeps the hotel?—Yes.

3254. Were you in court at the time when the Commissioners sat?—I was.

3255. Was that the gentleman who stood up?—No, it is not.

3256. You mean the owner of the hotel?—The owner of the hotel I mean. Mr. Newton came down Scotch-street from the direction of the hotel.

3257. What is his brother's name?—George is the man who spoke here in court to-day.

3258. Is he the owner of the hotel?—No, he is not; he is his brother.

3259. Now, you say the police went through the drumming party?—Yes, we had to run through them, in order that we —

3260. Mr. Commissioner COFFEY.—To head them?—No; in order that we might be at Carr's-row to keep back the Roman Catholic party—the attacking party.

3261. Mr. *M'Laughlin*.—And having got through them you formed at one side of them, and saved them from any inconvenience on that side?—

Mr. Commissioner COFFEY.—That is a very unfair way of putting it. It is not this man's evidence at all, nor a true representation of it. What he did was what I am very sorry to say Her Majesty's troops and constabulary force are very often obliged to, namely, to stand between two infuriated factions, and prevent them from flying at each other's throats. He ran through the drumming party to prevent the two parties from coming into collision—not to protect one party against the other.

Mr. Commissioner EXHAM.—And exposing themselves to the violence of both.

Mr. Commissioner COFFEY.—To prevent a breach of the peace.

3262. Mr. *M'Laughlin*.—Was not the effect of you going that way that the opposing mob could not get at them at that side?—Of course. Were it not for us they would have attacked them I believe, from their attitude and appearance.

3263. Did you see Mr. Newton at that time?—I did not.

3264. I suppose after these little matters were over they marched away out of the town?—Yes.

3265. And you remained in the town?—I remained in the town the whole day. We followed them on to Northland-row. They went out in the Killyman direction. I think it was at Tamnaghmore the meeting was that day.

3266. Do you remember them coming back in the evening?—I do.

3267. They had drums with them then?—They had.

3268. Where did you see them first?—At the foot of Scotch-street.

3269. Were there any police there?—There were.

Sergeant *Armstrong*.—The constable who went for the clerk of the peace says he is not able to come unless a car is sent for him.

Mr. Commissioner COFFEY.—Well send a car for him. Send a carriage and four horses for him if necessary. Is he able to come down to petty sessions?

Constable.—He does.

Mr. Commissioner COFFEY.—I will send no car for him. Let him apply in the ordinary way for his expenses. I think it is very great disrespect to the Court for a man in his position, having been sent for half a dozen times to send down a message of that description. His business is to come here.

Sub-Inspector *Smith*.—I hope you don't hold me accountable.

Mr. Commissioner COFFEY.—Indeed I do not. You are doing the best you can to facilitate and accommodate us.

3270. Mr. *M'Laughlin* (to witness).—The police were at the foot of Scotch-street?—They were.

3271. How many were there?—Well I should think there were about fifteen.

3272. Now was the drumming party that came back in the evening larger or smaller than that in the morning?—There were far more on their return.

3273. More drums?—Yes.

3274. And more noise?—Yes.

3275. It is only fair to you and the police to say that after the day's engagement they would be as little peaceable as at any other time. What did they do when they came to Fox's corner?—Yes. Mr. Fox lives at the bottom of Scotch-street, or at least he did then.

3276. Had they a leader as far as you could see; was there anybody in front of them?—Well, I saw Mr. George Moon; he was in front.

FIFTH DAY,
August 21.
Sub-Constable
Patrick Colgan.

3277. That is not the gentleman who spoke here to-day?—It is.

3278. Did you see Mr. Moon do anything, or hear him say anything?—Well, I did not. He just was in front walking like any of the rest.

3279. Did you see any other person there in a prominent position—this is to show that the parties were known and might have been dealt with?—I saw a man named Tom Johnston, a wood-ranger of Colonel Knox's.

Mr. *M'Laughlin*.—Colonel Knox is not accountable for the acts of his servants.

Mr. Commissioner COFFEY.—Certainly not.

Mr. *M'Laughlin*.—Now, do I say that he is?

Mr. Commissioner COFFEY.—Deal with the matter straightforwardly. You make comments in such a tone as to invite contrary observations.

Mr. *M'Laughlin*.—I would have saved you from that mistake. I was about to say that my object was to show that persons occupying a prominent position were known to the police, and that therefore they could have identified them, and I was saying that *bona fide*.

Mr. Commissioner COFFEY.—You may do anything you please, except make a comment that, in my mind, conflicts with your observation.

Mr. *M'Laughlin*.—Do you think I was guilty?—

Mr. Commissioner COFFEY.—What your mind conveyed to my mind was this—that because he was the servant of Colonel Knox, Colonel Knox was not responsible for him; but that was expressed in such a tone as to convey that he ought to be responsible for him.

Sergeant *Armstrong*.—I understood it further as if Colonel Knox sent him there.

Mr. *M'Laughlin*.—I hope you will reprimand the Sergeant.

3280. (To the witness).—Let us say that Tom Johnston is not in the employment of anybody. Did you hear him say anything?—I did.

3281. What did he say—let us have it?—When he was just coming up to the foot of Scotch-street he called, "Come on now, you cowardly rascals."

3282. Mr. Commissioner COFFEY.—Whom was that addressed to?—To the party who were up in Scotch-street.

3283. Mr. *M'Laughlin*.—Were they the Catholic party?—I believe they were.

3284. At all events they were opposed to the drumming party?—It was there the attack was made in the morning.

3285. Was Mr. Moon there at the time when Tom Johnston said "come on, you cowardly rascals"?—He was.

3286. Was he near them—could he hear them as well as you?—Well, I believe he could.

3287. How did they go then from that?—They passed on up by the Fowl-market, out here by the schoolhouse, and on out on the Canfield-road.

3288. You would know a shot if you heard it?—Well, I would.

3289. I suppose you would know it better if you felt it; did you hear any shots after they passed there?—I did.

3290. How many about?—Well, I believe I heard about twenty after they passed the schoolhouse.

3291. When you say "they" whom do you mean?—After the drumming party passed the schoolhouse.

3292. The shots appeared to proceed from the drumming party as far as you know?—Well, I could not say that of course. I did not see any of the shots.

3293. Was it from the direction in which they had gone that you heard them?—It was.

3294. Did you know any of the parties in addition to the two you have mentioned?—I did not. I was not long here.

3295. Did you report those whom you did identify to your superior officers?—I did. I told all I saw during the whole day.

3296. Do you know was anyone arrested or prosecuted?—No, there was not.

Mr. Commissioner COFFEY.—You are speaking of the occasion of the wrecking of the houses?

Mr. *M'Laughlin*.—No, I am speaking of the 12th of July, 1869.

Mr. Commissioner COFFEY.—In what year did the wrecking take place?

Mr. *M'Laughlin*.—In 1865—that is the great wrecking.

3297. (To witness).—No one was arrested. Do you know was anyone summoned?—I believe there were no proceedings taken.

3298. You have been present at petty sessions occasionally?—I have.

3299. You left this on the 2nd of September last?—Yes.

3300. That is about twelve months ago?—Soon will be.

3301. Do you remember being here at the time of the Killyman funeral, in April, 1870?—I do.

3302. What was that business?

3303. Sergeant *Armstrong*.—Were you at it?

3304. Mr. *M'Laughlin*.—Did you see any portion of it anywhere?—No, I did not see any portion of the funeral.

3305. Did you see any portion of the resulting disturbance, or any contingent that went out that morning?—Yes.

3306. Tell us what sort of people were they, and what were they doing?—Well, some of the men that I saw going out were summoned here to petty sessions.

3307. Had they drums with them?—They had.

3308. Do they usually go to funerals in this country with drums?—Well, I never knew another instance of it.

3309. About what time of day was it that they were going out with drums?—It was in the morning, I should say about ten o'clock, or a little after it.

3310. Had they fifes?—They had.

3311. Were they playing any tunes?—They were playing tunes at the time the police went up. The head-constable took the names of, I think, seven or eight of them.

3312. Did you hear any of them asking for any particular tune to be played—any of the persons that were there?—I did; I heard a woman ask.

3313. Was she in the procession?—She came up at the time the police were taking the names.

3314. In the presence of the police what did she say?—She called on the drumming party to go on, and not to be afraid, and to play "Kick the Pope before them."

3315. Mr. Commissioner COFFEY.—Did they play it?—I could not say—no; they did not play any more.

3316. Mr. *M'Laughlin*.—Do you know that tune?—I had a slight knowledge of it.

3317. Could you whistle it?—I could not whistle it.

3318. Could you give us a stave of it?—Oh, I could not.

3319. Is there a chorus to it?—I know only the tune. I heard it whistled itself.

3320. Did you ever hear of Ward's celebrated song, "The child that died of the measles O," and chorus? Is it like that?—I did not hear the song.

3321. Was anyone punished for that affair of the Killyman contingent going out?—They were summoned here at petty sessions and informations were returned.

3322. Do you remember three policemen being all examined at once, on any occasion that ever you were at petty sessions?—I remember three policemen being taken up here, and a constable was examined, and the other two policemen were told that if they had objections to anything he said to object to it.

3323. Mr. Commissioner COFFEY.—On what occasion was that?—On this occasion that the drumming party went to Killyman.

3324. Mr. *M'Laughlin*.—They were brought before the sessions court?—They were summoned by the police.

3325. Were the magistrates there?—They were.

3326. Was the crown solicitor here?—He was not.

3327. Who was it that conducted the prosecution?—I served the summonses when taken out, and Head-

constable Quin and Head-constable Stewart were the complainants.

3328. Who were the defendants?—Abernethy, Miller, the two Hydcs, and a young fellow named Little.

3329. Who conducted the prosecution?—Well, Mr. Newton, the head-constable was first examined.

3330. Do you mean Mr. Newton the magistrate—was he on the bench?—He was chairman.

3331. Did he conduct the prosecution, or did the head-constable, or did they both do it jointly?—I will state according to my recollection, how it was done. The head-constable was first examined and he stated about the taking of the names and so on. Then Mr. Davison, the attorney, cross-examined him. Then Acting-constable O'Brien was examined, and then Constable Lynch, and Sub-constables M'Tarland and Clarke; and Mr. Newton said that to facilitate matters it would be better for the three to be examined together, and that if the other two objected to what Constable Lynch said they might do so.

3332. Mr. Commissioner COFFEY.—That one was to be examined and the others were to add to what he said?—They were to add.

3333. Or to object?—Or object to anything that he said.

3334. Mr. *M'Laughlin*.—Were the three of them sworn together?—They were.

3335. And one of them went on telling what it was?—Constable Lynch described from Moygashill cross-roads to what occurred at the funeral at Killyman.

3336. Were those expressions conveyed to the magistrates by evidence—the expressions you spoke of about the Pope?—No, they were not.

Mr. Commissioner COFFEY.—If I were the magistrate presiding there I would have had no hesitation whatever in throwing out of my consideration altogether that an old woman said something very indiscreet and coarse, and used party expressions. Why should we hold any human being responsible for what a woman would say under such circumstances, more particularly when it was not acted on? I mean to say that it does not aggravate the character of the transaction.

Mr. *M'Laughlin*.—It occurred to me that it would be a useful bit of evidence as illustrating the character of the music.

Mr. Commissioner COFFEY.—You have seen from the commencement—and unless it be overthrown by the most credible, persuasive, and cogent testimony, no human being can doubt it in the present state of the evidence—that nothing can be more exasperating, nothing more annoying, nothing more calculated to create and stimulate, and continue breaches of the peace than this system of drumming. According to the evidence of the responsible officer of the county it is regarded as a direct challenge to fight.

3337. Mr. *M'Laughlin* (To the witness).—Was any one returned for trial?—No, the law adviser said I believe—

3338. Mr. Commissioner EXHAM.—What do you say about the law adviser?

3339. Mr. Commissioner COFFEY.—We know from the previous evidence what this means. (To the witness) A case was sent up to the law adviser?—Yes, sir.

3340. On the informations taken, and he said that no case was disclosed?—Yes sir, that is it.

3341. Mr. Commissioner COFFEY.—We may as well give an interpretation to that. It means this, that under the Party Processions Act, in order to make a person amenable there must be banners, the parties must be walking in procession, party tunes must be played, and a number of other things of that sort must occur. On the face of these informations none of those things appeared, and therefore the law adviser with entire correctness said that no case for an indictment was disclosed.

Sergeant *Armstrong*.—This charge was not under the Party Processions Act at all; it was "that the defendants, with several others, on the 18th instant, did unlawfully assemble on the public road leading

from Dungannon to Laghy's corner with five drums and one fife, in such a manner as to produce danger to the tranquillity and peace of the neighbourhood, and to lead to a breach of the peace." A more strictly accurate statement never was heard.

Mr. Commissioner COFFEY.—It had nothing to do with the Party Processions Act at all.

Sergeant *Armstrong*.—What could the magistrates do but take the informations, and the law adviser told them that there was no case.

Mr. Commissioner COFFEY.—In order to be able to lay our finger on the blot, if any, we must have the informations in that case.

Sergeant *Armstrong*.—Where are the informations?

Mr. Commissioner COFFEY.—I cannot understand the law adviser's opinion if what has been stated here is in the informations.

Mr. Commissioner EXHAM.—I can perfectly understand what Mr. Coffey has been saying. Under the Party Processions Act they must not only be walking in procession, but they must, in addition, have party emblems, and be playing party tunes. Therefore, if they are summoned for that offence, and it does not appear before the magistrates, they can't be sent forward. But though they are not sent forward for that, they may be sent forward on proper summonses for another offence altogether, which is the offence that the Sergeant has just read.

3342. Mr. *M'Laughlin* (to witness).—How far is Dromore from the place where you are at present?—It is ten English miles beyond Omagh.

3343. I suppose you agree in opinion with those who say that these drumming parties are most offensive to the Catholics and dangerous to the public peace, and that they ought to be put down?—I do believe it.

3344. Do you think they can be put down?

Mr. Commissioner COFFEY.—It is not fair to ask him that. You know his opinion is immaterial on that. He is only to obey orders. Bring us up one of the superior officers of the force.

Mr. *M'Laughlin*.—Let the Sergeant do that.

Cross-examined by Sergeant *Armstrong*.

3345. Do you recollect that on the 12th of July, 1869, there were two resident magistrates here on special duty?—There were.

3346. Major Forbes and Captain Coote?—Yes, I believe they were.

3347. You gave information of what you witnessed on that day?—I told my own authorities.

3348. And you were all examined at the sessions?—I was not examined. There were no proceedings taken for it.

3349. To whom did you make your report?—I believe to Head-Constable Collins, and Constable Stewart, who is now head-constable.

3350. You reported to the Head-Constable?—In general to the Head-Constable.

3351. You don't go to the magistrates directly?—Oh, not at all.

3352. On the day you were examined about the Killyman funeral I believe Captain Ball was one of the magistrates?—He was.

3353. And insisted on taking the depositions and having them sent forward?—He did.

3354. There were several magistrates here and Mr. Newton was one of them?—Mr. Newton was chairman.

3355. And there were Mr. Cranston Lyle, Mr. Hamilton, Mr. Nicholson, Mr. Richardson, and Captain Ball—I believe a very large attendance?

3356. Mr. *M'Laughlin*.—That was the same occasion as that on which Mr. Newton was there—that affair in 1869?—Of course.

3357. And on that occasion although there were stipendiaries there were also local magistrates?—There were.

3358. Was that the occasion on which Mr. Hayden requested Mr. Newton to take up one of the Catholics for throwing stones?—I heard—

3359. Sergeant *Armstrong*.—Did you hear what passed?—I did not.

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Nobody doubts what Mr. Hayden says himself.

Mr. *M'Laughlin*.—It was occurring to me as possible, and I think the Sergeant will feel the force of the observation, that where a man, as in this instance, mentions the name of a magistrate, it might, perhaps, be undesirable for the constable to be absent when the magistrate is subsequently examined. I only throw it out.

Mr. Henry
Corr.Mr. *Henry Corr*, Petty Sessions Clerk, sworn ; examined by Mr. Commissioner EXHAM.

3360. Where are the different informations that are under your charge?—Those summarily disposed of are all kept in the office. Those sent for trial to the different tribunals—quarter sessions or assizes—go to the clerks of the peace and crown.

3361. Do you know the informations of May, 1869?—Yes.

3362. You recollect that?—I do.

3363. What was done with those informations?—They were forwarded to Mr. Molony.

3364. Were they given to him by you?—No.

3365. Or sent to him by you?—Sent by me.

3366. Have you ever got them back?—None since.

3367. Never since?—No.

3368. Mr. Commissioner COFFEY.—Have you any informations in your possession that were not returned to quarter sessions or assizes?—I have those that were summarily disposed of.

3369. Mr. Commissioner EXHAM.—What Mr. Coffey means is—in cases in which informations were returned either to quarter sessions or assizes, have you a single set, or a single information in any case, in your custody?—Not one.

3370. You have always forwarded them to the clerk of the crown?—I forwarded them invariably to the clerk of the crown or the clerk of the peace.

3371. Mr. Commissioner COFFEY.—There are none in your possession?—I have none.

3372. Mr. *M'Laughlin*.—None at all in your possession?

3373. When are the petty sessions days here?—Every fortnight.

3374. When was the last one?—On the 14th.

3375. You were present that day?—I was.

3376. How long does the session last on an or-

Mr. Commissioner COFFEY.—It is quite possible.

Mr. *M'Laughlin*.—For instance, if Mr. Moon came up.

Mr. Commissioner COFFEY.—Is this man engaged on duty?

Sub-Inspector *Smith*.—He is to return to his station.

Mr. Commissioner COFFEY.—He had better wait in the event of his evidence being further required.

dinary petty sessions day?—From eleven sometimes to one, often as late as four o'clock.

3377. The next petty sessions day in this court-house will be this day week?—This day week, the 28th.

3378. Sergeant *Armstrong*.—Do you know anything about the depositions taken in reference to the Killyman funeral?—No.

3379. Have you them?—I have none.

3380. I may apprise you that where the magistrates, having their own responsibility and instructions, have a doubt as to jurisdiction, they don't take informations, properly so called, in the first instance. They put them into the shape of informations, and call them depositions. These are what are sent to the law adviser, and if he says they disclose no case, they never are turned into informations. I want to know whether you have any depositions that were never followed by recognizances?—None.

3381. They don't take recognizances until there are informations. You recollect Mr. Buchanan stating that when they are not returned there is no way of tracing them. You have no depositions?—I have no depositions.

3382. Mr. *M'Laughlin*.—In that Killyman case, whether we are to call them depositions or informations, was any evidence taken in writing at all?—My recollection is that there was.

3383. It was sent on to the Castle adviser?—I say that there were depositions taken, and sent forward too. I think some of the magistrates forwarded them to the law adviser.

Sergeant *Armstrong*.—Very little attention is paid to depositions about which no rule is made.

Sub-Constable
Francis
M'Parland.Sub-Constable *Francis M'Parland* sworn ; examined by Mr. *M'Laughlin*.

3384. What rank do you hold in the force?—Sub-constable.

3385. Do you remember the Easter Monday of last year?—I do well—1870.

3386. Were you stationed here at that time?—I was.

3387. Are you stationed here now?—No.

3388. Where?—At Trillick, within nine miles from Enniskillen.

3389. Do you remember the Orange funeral that morning, and seeing the drumming party leaving the town in the morning?—I do.

3390. Were there many of them?—When leaving?

3391. Is that a note you took at the time?—I have it here [note book]; I shall read it for you if you like.

3392. You had better answer my question. Where did you first see the drumming party that day?—Leaving Miltown.

3393. They had fifes and drums?—They had.

3394. And they went in the direction of —?—They went in the direction of Moygashel first.

3395. Would you pass through Moygashel going to Laghy?—No, you would not; a cross-road intervenes.

3396. Were you the only policeman there?—Not at all.

3397. How many others were there?—I could not tell you; there were several policemen.

3398. A number of policemen?—There were.

3399. Where is Laghy Corner?—It is about three miles out of this, in the Killyman district.

3400. Was that the first place you saw them that

day, or was it in the town you saw them first?—I saw them at Miltown.

3401. Close here?—Down below—a continuation of the town I might say.

3402. And you and the other policemen followed them out?—The head-constable and several men were down at Miltown, or at least a little beyond it; they followed them, and the head constable took some names. Some of the drumming party were for going on, and some were for stopping. Eventually they did go on.

3403. Were they drumming at this time?—Well, they were drumming of course when we came up; but they ceased drumming of course when the head constable was taking the names; and, as I tell you, there was some consultation as to whether they should go back, or should go away. Then we went on along with them—the whole of us—the length of the far gate-house of the Earl of Raunfurly, and the head constable; and then the head constable and all the police turned back, except three, viz., the constable and two sub-constables, and I was one of the sub-constables.

3404. Who were they?—Sub-constables Lynch, Clark, and I.

3405. Do you remember a stone being thrown at you?—Indeed I do, well.

3406. How did that happen?—The stone came from a party at this side of Laghy Corner, towards the bushes.

3407. Before the head constable left, or afterwards?—Not at all—long afterwards.

3408. What did you and the others do after the head-constable left?—Well, we just followed the parties on to Killyman.

3409. That's where the funeral was?—Yes.

3410. What were you doing with reference to the drumming party when the stone was thrown at you?—Well, we were doing very little I assure you, except looking at them.

3411. Expostulating with them?

Mr. Commissioner COFFEY.—No; he says looking at them. It does not appear that he expostulated at all. The head constable took some of the names.

3412. Mr. *M'Laughlin*.—I put it interrogatively. [To witness]. Did you identify any of the persons there yourself by name?—Yes.

3413. Whom did you identify?—I identified Edward Hodgett, Samuel Miller, Andy Little, Arthur Abernethy, William Hyde, Eliza Neville, James Thompson, Crawford Hyde, Robert M'Reynolds, and Robert Rice, and another man who gave his name as William Wilson, which was not his name, I believe.

3414. Now, during how many hours that day were you with this drumming party altogether?—We left here about ten o'clock; they left the graveyard at ten minutes past one. I would take about an hour and twenty minutes walking along with them to come in.

3415. Had they colours and music?—They had music and colours too.

3416. Mr. Commissioner COFFEY.—How many banners had they?—There were two scarfs worn by the party coming from the grave, and several Orange handkerchiefs displayed.

3417. Sergeant *Armstrong*.—Do you mean coloured scarfs or flags?—I call them Orange scarfs—the name they are known by.

3418. Were the flags on poles?—Not at all; there were no flags.

3419. Mr. *M'Laughlin*.—They were merely worn across the breast?—Just across.

3420. Sashes?—They call them scarfs.

3421. As a matter of curiosity, did they play any music in the graveyard?—No.

3422. Mr. Commissioner COFFEY.—What was the date of this?—The 18th of April, 1870.

3423. Mr. *M'Laughlin*.—Was the conduct of the parties on that occasion such as in your opinion tended to endanger the peace?—Unmistakably. I formed my opinion about those drumming parties a long time ago.

3424. Were you asked that opinion on the occasion of the prosecution when you were examined?—I was not.

3425. Mr. Commissioner COFFEY.—Were you examined?—I was one of the three.

3426. That came up?—Exactly.

3427. Mr. *M'Laughlin*.—Were you one of the attendant witnesses?—I was.

3428. Was the man who was examined as the chief witness asked whether such things in his mind tended to provoke animosity, to produce a breach of the peace, or to endanger the public peace, or anything like that?—He was not.

3429. Who put the questions, do you know?—Well, if you will allow me I will tell you the whole matter. First of all the Head Constable was examined, and Acting Constable O'Brien about the first affair. Then, after he left us and came home, of course we went out after them. The summonses were taken out in the name of Constable Lynch as my superior. After the "Heads" case terminated on that day, our informations were taken just jointly here, in the box.

3430. Was it one of the magistrates or the Head Constable that asked the questions of the person that was examined?—Oh, as far as I can remember, it was Mr. Newton.

3431. Mr. Commissioner COFFEY.—As I understand your evidence, the Head Constable got into the box and made his complaint or statement?—Yes.

3432. Did he tell what occurred from first to last?—No, not from first to last.

3433. Up to the time he left you?—Exactly.

3434. That's what I mean—he told his story from what he saw from beginning to end?—Yes.

3435. Did he volunteer his statement, or was what he said elicited from him by a number of questions?—Well, he volunteered his statement, and then there were some questions, of course, asked from the bench.

3436. Was the same course adopted towards you and your comrade?—It was; but I may remark that when Lynch was examined we were told to take any exception that we had to his line of evidence.

3437. To what he said?—Exactly; that we might object to it; and I had to object to it, and did so.

3438. Mr. *M'Laughlin*.—As I gather from the answers you have given to the learned Commissioner, the evidence was given partly by way of voluntary narrative, and partly by way of incidental questions?—Certainly.

3439. Were the incidental questions put by Mr. Newton?—By some of the bench—I could not say whom.

3440. How many magistrates were there on that occasion?—Mr. Newton, Captain Ball, Mr. Richardson—I could not tell you the names of the rest—there was a number.

3441. Mr. Newton is a gentleman of great experience in the law, I suppose?—Oh, indeed I have seen him pleading here, and I was delighted with him.

3442. So was I before I knew anything about the law myself. Do you remember was Captain Ball one of them?—He was.

3443. Do you remember Captain Ball asking you any questions as to whether you yourself were personally afraid?—I do.

3444. Was anything said as to whether you should answer that or not?—Well, I think there was some discussion.

3445. What was it?—I cannot tell.

3446. Were you allowed to answer?—I tell you the answer I gave. I stated that I was not afraid, as I think a policeman should not be afraid of any party, because he is unfit for his duty if he be afraid of anybody. I answered it in that way—in that sense.

3447. Did any other policemen say they were afraid?—Yes, Lynch said he was afraid. Clarke said he was not afraid as well as I.

3448. Mr. Commissioner COFFEY.—Was that the answer with respect to which you said you disagreed with him, when Lynch said he was afraid?—Yes, I said I was not afraid.

3449. That was the part of his account of the transaction that you differed from him?—Exactly.

3450. Mr. *M'Laughlin*.—The question as to whether it was likely to produce a breach of the peace was put to nobody?—Well, I don't remember.

Mr. Commissioner COFFEY.—All I can say is, that if it was not put, it ought to have been put.

Mr. *M'Laughlin*.—That was the object of my examination.

Mr. Commissioner COFFEY.—If these gentlemen had skill, training, and experience, it would naturally have been one of the first questions they would have put, namely, was a demonstration that marched, beating drums and wearing scarfs, calculated to produce a breach of the peace, and to infuse terror into a reasonable man?

Mr. *M'Laughlin*.—Just so; and Mr. Newton being a man experienced in the law for a quarter of a century, I should have thought that he would have put it.

Sergeant *Armstrong*.—Now you are assuming that he did not put it, and anything more unfair and irregular than that could not be. It was all put and fully returned.

Mr. Commissioner COFFEY.—With respect to that you cannot put it beyond error of judgment.

Sergeant *Armstrong*.—There was no error—don't assume that.

Mr. Commissioner COFFEY.—Allow me, for the purpose of what I am stating, to say that assuming the matter to remain as it is, what I say is—and my training and experience enables me to say so—that it was an error of judgment in not putting that which

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was the crucial cardinal question, but it is an error of judgment which we can't suppose to have proceeded from partiality or corruption, inasmuch as the resident magistrate was present on the bench at the time, and if he thought it a point necessary for the completion of the informations, it was his duty to have put the question just as well as anybody else on the bench.

Mr. *M'Laughlin*.—I am not concerned for the resident magistrate.

Mr. Commissioner COFFEY.—I know you are not, but I am stating it publicly, in the interests of justice, in order that the thing may be fairly and squarely put.

Mr. Commissioner EXHAM.—I won't assume it for one single moment where, as I understand, the charge was for an unlawful assembly calculated to produce a breach of the peace.

Mr. *M'Laughlin*.—You won't?

Mr. Commissioner EXHAM.—Certainly not.

Mr. *M'Laughlin*.—Do you mean that you will not believe this man's evidence?

Mr. Commissioner EXHAM.—The man has said nothing of the kind.

Mr. Commissioner COFFEY.—He was asked the question, and he refused to answer it in the affirmative. He says the question put to himself was, whether he personally was afraid, and his answer was, "I myself was not afraid."

Sergeant *Armstrong*.—Two others of the force said they were afraid.

Witness.—No, I beg your pardon, one other.

Mr. Commissioner COFFEY.—Lynch so stated.

Witness.—Yes, exactly.

Mr. *Barry*.—No doubt, the resident magistrate was in exactly the same position as any of the others, but we have to ascertain what the fact is.

Mr. Commissioner COFFEY.—I want to prevent a popular misconception on the matter, and I shall take care that there shall be none, as far as I am concerned—

Mr. *M'Laughlin*.—In the interests of justice. It was my observation that brought out the facts.

Mr. Commissioner COFFEY.—To be sure, and nobody blames you. That proceeding was perfectly right. The only thing we differ about is, the complexion this man's evidence at present bears. He has not said that the question was put to him in the way you expressed it.

Mr. *M'Laughlin*.—What question?

Mr. Commissioner COFFEY.—Whether the proceedings of that party were calculated to produce a breach of the peace and to inspire terror.

3451. Mr. *M'Laughlin* (to witness).—Were you asked that?—I believe I was not.

That is what I understood you to have said. We were arguing on different bases.

Mr. Commissioner EXHAM.—I don't know that we are, for what the man says is, that Lynch was asked it; in fact, that he was asked was he in terror.

Mr. *M'Laughlin*.—Terror is one thing, and a breach of the peace is another.

Mr. Commissioner EXHAM.—If it was calculated to inspire terror in one of her Majesty's constabulary, I think it was not a very unnatural thing for the magistrates to have assumed that it was calculated to inspire terror and to create a breach of the peace with persons who looked on it in a very different way from what they did, for they were there doing their duty.

Mr. Commissioner COFFEY.—(To Mr. *M'Laughlin*).—It is better, perhaps, not to interfere with your examination.

Mr. *M'Laughlin*.—I have some rudimentary notions about the propriety of allowing me to go on.

Mr. Commissioner COFFEY.—Do you not suppose that it is our duty to intervene whenever we think it necessary? What I suggest to you is, that you should be good enough to come crucially to the point, for we don't want to avoid it. We want to meet it, and sift it to the very bottom.

Mr. *M'Laughlin*.—I have put all the questions about it that I can think of.

Mr. Commissioner COFFEY.—I will put a few more when you are done.

3452. Mr. *M'Laughlin* (to the witness).—For fear of any misconception about my not having already put it, I was about to ask you—and give me a plain answer to this question, and let there be no mistake about it—were you, or were you not, asked by anyone whether or not what you saw and heard was calculated to excite animosity and to lead to a breach of the peace—yes or no?—I believe I was not, as far as my recollection goes.

Sergeant *Armstrong*.—There is not a word about animosity in the charge.

Mr. *M'Laughlin*.—Well, I admit that.

Sergeant *Armstrong*.—Put it in the terms of the summons.

3453. Mr. *M'Laughlin*.—Give it to me. "For that the defendants on the 18th instant did unlawfully assemble on the public road leading from Dungannon to Laghy Corner"—is not that place three miles away?—Yes.

3454. "Having with them five drums and one fife, in such a manner as to produce danger to the peace and tranquillity of the neighbourhood, and to lead to a breach of the peace." Were you asked whether or not what you saw was calculated to produce danger to the peace and tranquillity of the neighbourhood, and to lead to a breach of the peace?—I believe I was not.

3455. You are lawyer enough to know that this is a charge of an unlawful assembly, and that it is part of that—as the Court will, perhaps, take cognizance of—that it should excite those feelings, because it is the animosity that endangers the peace, and if everybody approved of it nobody would be offended, and therefore there would be no endangering of the peace. You have already told me that you have no second opinion—was it you said that—about the necessity of?—I did not say that I had not a second opinion.

3456. But you have no opinion except the one, namely, that these things are highly dangerous, and should be put down?—Unmistakably; and I say that from my experience of ten or twelve years about this place, they are a perfect nuisance—nothing short of it.

Cross-examined by Sergeant *Armstrong*.

3457. As an attentive man at your business, tell me all that the Head Constable stated before the magistrates?—Indeed I could not tell you.

3458. There's the point, you know—you can't tell me anything?—Each magistrate. Well, I will tell you if I possibly can.

3459. You stated that you don't recollect whether you were asked a certain question, and that you believe you were not?—I believe I was not.

3460. I want to test the accuracy of your memory. Begin and tell the Court as much as you recollect of what the Head Constable stated, and then it may ooze out as to —?—He stated that he and a party of men went down to Miltown when this drumming commenced, and that he took the names of some parties; and he, of course, stated that he advised them to go back, and not go out to that place, and some other things. Certainly, I could not state everything that he said.

3461. Did he state why he advised them to go back?—Well, it seems—I was not here.

3462. Do you mean that you were not in the court?—I beg your pardon; I was not.

3463. What do you mean by the word "here"?—Wait till I explain.

3464. No indeed I won't. I won't be misled. Were you here when the Head Constable was under examination?—I was; but you asked me why he told them that, and I want to explain.

3465. Did he state to the magistrates why he advised the fellows to go back?—I have no desire at all to state anything except what's true.

Mr. Commissioner COFFEY.—He asks you whether he stated to the magistrates why he advised them or expostulated with them.

3466. Sergeant *Armstrong*.—Make your mind easy.

I am not cross-examining you at all. Will that satisfy you? Did the Head Constable state to the magistrates that he told them to go back out of that, and not be marching?—Not to go—to come back, in fact. I was also about to add there. I have given my answer; allow me to explain.

3467. Mr. Commissioner COFFEY.—Yes; what?—The Head Constable stated—he did not state this on the road—he told them there to come back; but he stated here in the court-house, that it was in consequence of a case having been cited from this bench, that he took action on that occasion.

3468. Sergeant *Armstrong*.—In consequence of what?—Of a case—supposing that such and such was, or at least would take place, that informations would be returned against them. Then this case did take place.

3469. And it was in consequence of what he heard the magistrates advancing here that he interfered with those men?—I don't know what he heard. I understood that—

3470. Did he state on the day of the investigation about the Killyman affair, that he expostulated with those men, and wanted them to go back, because he had heard the magistrates make an announcement in reference to this matter from the bench?—I believe so.

3471. Mr. Commissioner EXHAM.—Did he explain that to the people that day in their presence?—Well, I believe he did. He did everything he possibly could.

3472. Did he tell them that in consequence of something he had heard from the magistrates he desired them to go back?—No; he did not speak about the magistrates, but he gave them to understand that they would be prosecuted if they went out.

3473. You say he told them of something that he heard—of what case?—A case that had been cited from this bench, I believe.

3474. When you say “this bench,” do you mean by the magistrates that sit on this bench?—Certainly so.

3475. Sergeant *Armstrong*.—On the day of the investigation about this Killyman funeral, did he say why he advised them to go back? did he say he had told the people that it was likely to lead to a breach of the peace, and disturbance of the country, if they would not go back?—No; he did not.

3476. Did he say anything more—what else did he say?—Oh, I could not tell you. I have told you that before.

3477. How long was he under examination?—About fifteen or twenty minutes.

3478. Who was taking down the evidence?—Mr. Newton.

3479. I believe he was chairman that day?—He was.

3480. Captain Ball was here?—He was.

3481. And five other magistrates—seven in all. You can tell me all the head constable said?—Indeed I cannot. It would be impossible for me to remember it.

3482. Did you differ from Lynch and Clarke in anything except saying that you were not afraid?—Oh, yes.

3483. Well what did you tell—begin and tell us?—I cannot tell you.

3484. Sure there is your little note book?—I will read out of it for you if you like. It is morally impossible that I should think of everything.

3485. Do you recollect what you said, or that you stated anything except that you were not afraid?—Well, I did, I stated that fearlessly. Lynch was spokesman, and a wonderfully ignorant one he was.

3486. Tell me what Lynch said?—He stated, of course, that we went out to Killyman, and that certain things occurred on the road.

3487. What did he say to the Court?—Indeed I cannot tell you that.

3488. Then in point of fact you don't know what he said?—Well, I remember his saying that he was afraid, and I thought it very curious for a police sergeant to say that.

3489. Do you recollect him saying that he thought it was likely to lead to a breach of the peace?—No.

3490. What did he say he was afraid of?—Afraid of being killed, I suppose.

3491. Afraid of whom—who would kill him?—Well.

3492. Did he say he was afraid there would be a disturbance between the two factions?—Indeed he did, and did not conceal it coming along the road with us too.

3493. Did he say he was afraid there would be a disturbance between the two factions?—No, there was no other faction there at all.

Mr. Commissioner COFFEY.—Wake up from your dreams over that note book. It bewilders you instead of giving you assistance. Attend to the questions asked you.

3494. Sergeant *Armstrong*.—Did he say he was afraid of a row with the Catholic faction?—Oh no, he was afraid of them himself.

3495. Was anything said about the danger of the Catholics taking offence?—Oh no.

3496. On the day of the investigation was there any talk at all of the tendency of this drumming work on the Catholic mind—that it vexed and annoyed them?—No, I don't remember any Catholics being mentioned at all.

3497. Do you recollect was anything said about the disturbance of the people and of the country that was likely to follow the drumming that day?—No.

3498. You are sure about that?—Quite sure.

3499. Did you think that drumming that day calculated to endanger the public peace?—Unmistakably.

3500. Sergeant *Armstrong* (to witness).—Were you ever present when Mr. Stanley was adjudicating on these petty sessions cases at Dungannon?—I was.

3501. Did you hear him condemn them?—Of course I did.

3502. Strongly?—Yes.

3503. Did you hear him fine anybody?—Of course he fined them. I don't know as far as drumming is concerned.

3504. Do you recollect the day the fellow was before him, charged with another offence, with the offence of being drunk, or something of that sort, and being fined and saying “To hell with the Pope?”—I do well.

3505. Did Mr. Stanley call him back and fine him five shillings for saying that?—Mr. Stanley first fined him half a crown.

3506. For what?—For being drunk and disorderly, and then he came back out of his office, and asked me what were the disorderly expressions and disorderly conduct. I said that he cursed “To hell with the Pope;” and Mr. Stanley said, “Now I will fine you five shillings for that.”

3507. Were you much at the sessions here?—Very much indeed.

3508. When these drumming cases were before the bench?—Well, no; except in that Killyman case, I believe I never was here at petty sessions when drumming parties were on.

3509. Mr. *Barry*.—You stated that on this occasion Constable Lynch swore that he was afraid?—Yes.

3510. I don't see what more I have to ask you. That single swearing alone was quite enough to sustain the charge.

3511. Mr. Commissioner EXHAM.—When the head constable met the party going out in the morning, you say that he mentioned something about a case that had been before the magistrates. Will you tell me exactly, as well as you recollect, what he said to them then. He told them, for instance, I think I heard you say, that if they did certain things?—That if they went out, if they did not return—

3512. State exactly, as nearly as you can, what the head constable told the party in the morning. You read out that some of them did not go?—He told them that if they went out to Killyman they would be summoned.

3513. Did he tell them for what?—Well, I could not tell, but it had been talked over.

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3514. Mr. Commissioner COFFEY.—You say that the head constable went up and spoke to the men?—He did.

3515. Some went and some remained?—Exactly.

3516. You are asked to say what exactly the head constable said?

Mr. Commissioner EXHAM.—Or the substance of it.

3517. Mr. Commissioner COFFEY.—You have gone the extent of saying that if they went out they would be liable to be summoned, or would be summoned—did he add anything else?—Well, I don't remember.

3518. Was there any conversation between the men who composed the party and the head constable about a case that had been decided here on the bench—did the head constable say anything to them about it?—There had been no case decided on the bench at all. A supposed case, I understand, had been stated here.

3519. What we want to know is, did the head

constable refer to that when he was speaking to these parties?—I believe he did.

3520. Can you charge your memory by saying the substance of what he said to them on the subject?—I could not.

3521. When the head constable returned Lynch and yourself went to Killyman, I presume, in pursuance of the direction of the head constable?—It was.

3522. To watch the party, and see what they would do?—Exactly.

3523. And report to him when you came back.—I reported to Mr. Smith the next morning.

3524. Mr. *M'Laughlin*.—Do you know whether or not it was in consequence of some letter that Captain Ball referred to from the bench—did you hear Captain Ball referring to any letter from the bench in reference to these unlawful assemblies and drumming parties?—I did not. I heard it talked over amongst ourselves.

Sub-Constable *John Walsh* sworn ; examined by Mr. *M'Laughlin*.

Sub-Constable
John Walsh.

3525. What rank do you hold in the force?—Sub-constable.

3526. You were stationed at Dungannon?—I was.

3527. Where are you stationed now?—Augharran.

3528. Do you remember being here in the month of February, 1869?—Yes.

3529. That was the time of the effigy burning?—Yes.

3530. Do you know whether or not any extra police had been drafted in on that day of the effigy burning?—There were.

3531. How many?—I could not see how many.

3532. To what extent was the local force increased?—There might be five or six.

3533. Was there anything of an exciting character to account for the presence and advancement of the force except the effigy burning?—[Not answered].

3534. There was no other trouble that day, except this?—Oh, I think not.

3535. I believe you were there towards the foot of Scotch-street. Did you see the burning yourself and hear the firing?—I saw the light.

3536. On the hill?—Yes.

3537. And did you hear the shooting?—I heard a couple of shots.

3538. Were you at Moon's corner?—I was not exactly at Moon's corner.

3539. Did you see stones thrown?—I did.

3540. Did you hear evidence offered about that?—I did not.

3541. Were the stones thrown at houses or people?—They were throwing them up the street.

3542. Who were the executioners of the effigy?—I could not tell who threw them.

3543. Mr. Commissioner COFFEY.—Which party threw them?—I could not tell what party. They were the party returning through. Some went down Carr's-row, and some went down George's-street.

3544. Were they thrown by both parties, or one exclusively?—They were thrown from the party that was coming up Scotch-street.

3545. From the direction of the hill?—Yes.

3546. There were two parties. Was that the day or night that Mr. Newton was there?—Yes.

3547. How many police were down about that time?—I could not say the number that were there.

3548. Were there ten?—I don't think there were.

3549. Eight?—There might be eight.

3550. How long did the demonstration on the hill occupy—half an hour?—About that.

3551. Were you nearer to the hill than the Scotch-street party that you have been mentioning?—I was not.

3552. Do you know if any of the rest of the police were further over?—I am not sure, indeed.

3553. The burning of tar barrels here, I believe, is to some extent, a common mode of rejoicing at weddings and things of that sort?

3554. You remember the burning of a tar-barrel in

the Diamond, for something connected with the success of Mr. Dowse?—Yes.

3555. Did you hear firing of guns that night?—I did not.

3556. Did you see or hear any throwing of stones that night?—No.

3557. Was there any collision between two hostile mobs on that night?—No, I think not.

3558. I believe that, in point of fact, the burning of tar-barrels is the local way of exhibiting rejoicing here?—They do, when people get married.

3559. I believe there are always tar-barrels burned for prominent persons, or anything of that sort?—Sometimes.

3560. As a man resident here, what do you think about these drumming parties—should they be put down?—I think it would be as well.

3561. With reference to the peace of the community?—Yes.

3562. Mr. Commissioner EXHAM.—While the party were at Windmill-hill—wasn't it up there the effigy was burned?—It was.

3563. You say you heard a couple of shots only; were you in a position to hear? are you accurate in saying that there were no more than a couple?—I could not say that I heard any more.

Mr. *M'Laughlin*.—On Saturday night I mentioned that in consequence of the position the case had attained, I would not go into any further evidence as to the character and dangerous consequences of these drumming parties, although there is a host of evidence of the same class as that already given. There is quite enough on record, and therefore I will not produce any more. In the same way as regards the constabulary, although I have their names, unless something arises that I cannot foresee. I don't intend to produce any further members of that force. I am, in point of fact, done with my case, except so far as the examination of the gentleman whom we have sent out for is concerned. We have sent for him, and I suppose there will be no objection to my examining him when he turns up.

Sergeant *Armstrong*.—Who is he?

Mr. *M'Laughlin*.—Mr. Joseph B. O'Neill.

Mr. Commissioner EXHAM.—There can be no objection to that.

Sergeant *Armstrong*.—I see no objection.

Mr. *M'Laughlin*.—That being so, I close.

Sergeant *Armstrong*.—Well, I think Head Constable Stewart will be called by us, although I don't attach the slightest weight to his evidence, if nobody else calls him.

Mr. Commissioner COFFEY.—We will take the responsibility from both sides, for I intend to call the Head Constable whose name has been mentioned if nobody else calls him.

Sergeant *Armstrong*.—I don't object to an adjournment for half an hour, for I would not like to begin.

and afterwards have my case overlapped by the evidence of Mr. O'Neill.

Mr. *M'Laughlin*.—We have not kept back the inquiry half a minute. We had everything ready, and if I had known of this I should have had the gentleman present at the sitting of the Court. He has been sent for post haste. With reference to Head Constable Stewart, he is not my witness, and therefore I don't mean to call him. The Sergeant has a right to call him. The Commissioners are fully entitled to call any witnesses they like; nevertheless, I would respectfully suggest whether it would not be the most regular course for the Commissioners not to exercise their discretion in that respect until both parties have closed.

Mr. Commissioner COFFEY.—All I mean to convey is, that if neither of you produce Head Constable Stewart, we will call him.

Mr. Commissioner EXHAM.—Before we make any report we will hear him.

Mr. *M'Laughlin*.—I won't make him my witness.

Mr. Commissioner COFFEY.—I won't call him now. If neither of you call him I will.

Sergeant *Armstrong*.—I never would think of closing the inquiry without him. The magistrates, though nominally the defendants, are truly the promovents, and are perfectly determined to vindicate their entire position by every means; and therefore I will ask my learned friend not to oblige me to go on until we hear this Mr. O'Neill.

Mr. Commissioner COFFEY.—Then we may as well adjourn now.

Mr. Commissioner EXHAM.—Mr. Smith has all the police in court.

Mr. *M'Laughlin*.—Far more than ever I required.

Mr. Commissioner EXHAM.—Sergeant Armstrong, do you require any of the police?

Sergeant *Armstrong*.—I cannot undertake to say that at all; and I think, having regard to the real importance of the inquiry, they are very well employed in attending.

Sub-Inspector *Smith*.—Quite so.

Sergeant *Armstrong*.—Better let them attend than be sending messengers for them afterwards.

Mr. *M'Laughlin*.—The Commissioners will allow me to say, in justification of the course I have taken, and having regard to the fact that I am here in sustaintment of the allegations of the memorial, however the inquiry has been circumscribed, that it would not be right for me, making charges against the local police, to call them as my witnesses.

Mr. Commissioner COFFEY.—Then we will adjourn till half-past one.

The Court resumed at two o'clock.

Mr. Commissioner COFFEY.—As soon as you have examined Mr. O'Neill, will you have exhausted all your probable testimony?

Mr. *M'Laughlin*.—All, absolutely. I intended so to convey myself to the Commissioners.

Sergeant *Armstrong*.—Is the evidence exceedingly material?

Mr. *M'Laughlin*.—I will show you what he proves. [Hands letter to Sergeant Armstrong]. We consider the evidence material.

Sergeant *Armstrong* (after having read the letter).—My friend has been so obliging as to show me the communication of the gentleman whose name has been mentioned. Having read the letter, I would rather hear his evidence before I say anything.

Mr. *M'Laughlin*.—Perhaps the Sergeant will bear me out in saying that the evidence is important, and sufficiently important to justify me in asking that it should be given.

Sergeant *Armstrong*.—I think it may be. If I were in a position, I would try to get it in, if I was on the other side.

Mr. *M'Laughlin*.—And if you tried I think you would succeed.

Mr. Commissioner EXHAM.—I take it for granted that it is important.

Sergeant *Armstrong*.—We all know that statements are sometimes put on paper that don't afterwards exhibit the same strength in evidence.

Mr. *M'Laughlin*.—They will not be of the slightest importance unless they are proved in evidence.

Mr. Commissioner EXHAM.—I suppose you have no other documentary evidence.

Mr. *M'Laughlin*.—The view I take of the documentary evidence is this. All the documents produced from official custody I take to be evidence whether put in by one side or the other. I don't propose to supplement that by any documentary evidence, and I will tell you why. At present there is a host of documentary evidence supplied in this way. There is the correspondence between the magistrates and the Castle, and particularly the letter in which the magistrates make out the case signed by Alexander McKenzie Lyle. I think that is an important document, and I will have to trouble the Commissioners with some observations upon it; I have no other way of dealing with it. That letter is part of your official records. There is another class of documentary evidence, to wit, the informations so far as they have been obtained, and will be obtained from the persons who ought to have them; these and the law adviser's opinion from time to time are the common property of all parties, and official records of the Commission. In addition to these there are the entries in the petty sessions books, which explain themselves; and, having regard to the course so promptly and effectually suggested by Mr. Commissioner Coffey that abstracts of the entries will be taken for the books conversant with the particular subjects of inquiry, there will be official records too. The only other documentary evidence is a letter referred to by one or two of the witnesses, and which has been already described by the Commissioners as containing a very able, and, at the same time, very useful and sound explanation of the law to be applied to these particular transactions—I mean the letter of Lord Chancellor Brewster. I intend to draw the attention of the magistrates to this matter on the cross-examination. There are no other documents that I propose to put in, and I think it might be right to say so much without going through the form of putting in what are in fact in already as official documents. The letter of Mr. O'Neill I have shown to the Sergeant, and I would say—but this is a matter altogether for his own judgment—that is the evidence proposed to be given is conversant with a particular magistrate and particular acts. He (the Sergeant) might be able to go on with his statement without postponing the inquiry. This, however, is altogether for himself.

Sergeant *Armstrong*.—My friend, with the utmost fairness, has shown me the letter, and having seen it, I think it of the utmost importance not to say one word till the witness is examined.

Mr. Commissioner EXHAM.—What do you suggest we should do? Have you any assurance that the witness will be here in an hour or two?

Mr. *M'Laughlin*.—I don't feel myself in a position to say that. I think the Commissioners have acted with extreme courtesy and a good deal of consideration towards me, and all I can say is, that from what has come to my knowledge, everything will be done to have him here as soon as possible.

Sergeant *Armstrong*.—The letter is stated to have been only received this morning. It deals with matters that have only just been opened to me, and I certainly would like to have them proved or not before I go on, if a fair opportunity is given. I would expect this gentleman to turn up.

Mr. *M'Laughlin*.—I am sure the Sergeant does not mean to convey that I invented the thing myself?

Sergeant *Armstrong*.—Certainly not—but a gentleman may write a letter which possibly he cannot substantiate.

Mr. *M'Laughlin*.—No doubt.

Sergeant *Armstrong*.—It is possible; therefore I think it best to wait till I hear the witness.

Mr. Commissioner COFFEY.—We are in a peculiar position here. It is our duty not to allow the public time to be unnecessarily wasted, because we cannot close our eyes to the fact that this inquiry is being conducted at a very large expense to the public and to

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the parties themselves. We are bound upon the other hand to see that full justice is done—and certainly we would ill perform our duty, if, when it is stated on the responsibility of counsel that there is important evidence he expects will be forthcoming, we prevented that evidence from being given; and, under the circumstances, I see no alternative—giving credit to Mr. M'Laughlin for doing what is quite right and proper, not occupying our time unnecessarily with evidence that would not strengthen his case—I see no alternative but to adjourn the Court for another hour, when, I presume, humanly speaking, if he intends to come forward, he will be present.

Mr. M'Laughlin.—I think the sergeant will bear me out that the document contains intrinsic evidence that the witness intends to come forward? I cannot use the document otherwise than to say that in proof of the *bonâ fides* of the course I am taking.

Sergeant Armstrong.—I concede that, and I may concede in general terms, as the estimate of my friend's belief, that the evidence is important, that he has sent for the witness. It is only fair to say that.

Mr. Commissioner Coffey.—Perfect fairness has been shown to you by Mr. M'Laughlin.

Sergeant Armstrong.—I have always met that from Mr. M'Laughlin.

Mr. Commissioner EXHAM.—Can you tell us what took place about the depositions in relation to the summons taken out by Head-Constable Stuart and Sub-Constable Lynch.

Sergeant Armstrong.—I have not an idea of what became of them. There is no doubt whatever that they were sent to the Castle. We hear from inquiry that the Attorney-General was in London at the time, and that the law adviser (this is what has reached us), having some little difficulty in the matter, sent them to the Attorney-General in London, and whether, no action being taken on them, they remained amongst his papers or were sent back to the Castle, or were thrown aside, we know not; but they never came back to us.

Mr. M'Laughlin.—With respect to Mr. O'Neill's attendance, I am informed that Mr. O'Neill, amongst his other property, has a freehold farm in the neighbourhood of Stewartstown. He will probably be found either at his residence in Stewartstown or there, and the probability is we will have him here in an hour or so.

Mr. Commissioner EXHAM.—Perhaps we had better not say what we will do till four o'clock.

Mr. M'Laughlin.—I am sure the Commissioners are satisfied of the *bonâ fides* of our exertions to get him.

Mr. Commissioner Coffey.—I am perfectly sure of that. But what is pressing on my mind is, that if this information is important you should have had it at an earlier stage of the proceedings.

Mr. M'Laughlin.—How could we get it? It has come in owing to a part of the evidence that appeared in the newspapers, that is stated in the letter I showed to the Sergeant.

Mr. Commissioner Coffey.—What Mr. Commissioner EXHAM says is reasonable and right. We will adjourn till four o'clock. If the witness comes in in the meantime send for us, and we will come at once. If you have any further application for postponement at four o'clock you must support it by affidavit.

Mr. M'Laughlin.—Very well.

The Court was then adjourned till four o'clock.

When the Court resumed,

Mr. M'Laughlin stated that a joint affidavit had been prepared to be sworn by Mr. M'Mordie and Mr. Hayden, as a ground for applying to the Commissioners for a further adjournment.

Mr. Hans M'Mordie and Mr. John Hayden were then sworn to the affidavit, which was handed to the Commissioners together with two documents referred to in it.

Sergeant Armstrong.—Are those referred to in the affidavit—are they identified?

Mr. Commissioner EXHAM.—Yes, they are.

Sergeant Armstrong.—Then they must be read in open court. Now, if my learned friend has any appli-

cation to make to the Court I will ask him to make it in the usual way. But to hand you the affidavit and letters is, I think, not quite regular.

Mr. M'Laughlin.—Surely the affidavit must be signed.

Mr. Commissioner EXHAM.—I thought it was to sign it that it was handed to us.

Mr. M'Laughlin.—Now I mean on this affidavit to apply to the Court for permission to examine the witness named herein at a subsequent stage of the inquiry. I make the application most formally. I did not think it would have been necessary for me to do so. (Counsel was proceeding to read the letter of Mr. Joseph B. O'Neill.) Now I may say that this letter I read because the Sergeant desired that it should be read, otherwise I should consider it unfair to read it.

Mr. Commissioner EXHAM (to Sergeant Armstrong).—Is that the letter you saw to-day?

Sergeant Armstrong.—This is the letter I saw to-day. I have not the slightest objection to allow the case to stand over till morning, but I will strenuously oppose forcing me on until this gentleman presents himself.

Mr. Commissioner EXHAM.—Do I understand you to say that you wish this letter to be read in public?

Sergeant Armstrong.—Not at all, unless my friend presses me to go on, which I am determined to oppose in every way I can.

Mr. Commissioner Coffey.—It strikes me that it would be a very imprudent thing and a very incorrect thing to allow letters which may reflect upon the character or conduct of individuals to be read without there being a full opportunity of sifting and testing the evidence upon which the statements are founded.

Sergeant Armstrong.—Very well, then, I will not press it; let them not be read. But I know enough of the letters, and enough now of what has transpired here to see the unfairness of compelling me to go on until either this gentleman appears, or the case that he makes is totally and unreservedly withdrawn. I do not blame anybody on the other side.

Mr. M'Laughlin.—I think that if ever men have put themselves right in court we have done it in reference to the matters contained in these letters.

Mr. Commissioner EXHAM.—Certainly.

Sergeant Armstrong.—Certainly.

Mr. M'Laughlin.—And I may state this to-day, that if I conceived that any material injury would result to the gentleman referred to in the letter, or to the writer of the letter, or to anybody in the case by my suggestion to read it at a subsequent stage of the inquiry, I think my own sense of what is right might be sufficiently depended on not to do it. But the Sergeant is incomparably a better judge of his own client's interests than I am; and I simply now make the application formally contained in the last paragraph of the affidavit. And I think myself that the Sergeant has, on reflection, adopted what I take leave to say would be the course that the Sergeant would instinctively adopt in any case, that is, the proper and prudent course of not reading this letter. It is not fair to the man who wrote it, or fair to the man in reference to whom it is written. But there being enough in the letter to justify the application, I respectfully make it; and one reason for which I press it is this, that a letter of that class which makes even incidentally a reflection upon anybody, I shall always take care when I have anything to do with it it shall be thoroughly probed to the bottom. I do not want to have the letters read for the present, but they are now before the Court to this extent, that if this gentleman should be called he can be cross-examined as to the contents of the one written by himself.

Mr. Commissioner EXHAM.—No doubt of it.

Sergeant Armstrong.—That is my great anxiety, and now my learned friend knows the general bearing and purport and tenor of the case, and how it, to say the least, involves one gentleman of high respectability; and under these circumstances I feel that I might be led into a false position if I proceeded to make any promise or examine a single witness until this gentleman either comes or says he will never come. If he will say that he will never come, and my learned friend

announces that in the morning, I will go on to business; but at present to discuss it piecemeal in a dislocated way with this mine as it were sprung upon us, is a matter I am not at all prepared for. But if, upon reflection and consideration, he thinks it perhaps judicious now to abandon that case altogether, and these imputations suggested by this letter, why, I shall be happy to go on, and very much regret the loss of this evening; but otherwise I would ask you to have regard to what I say, and ask you not to dislocate the case.

Mr. Commissioner EXHAM.—Then I understand you to express a wish, on the part of the magistrates, that we should go on to-morrow morning, and put Mr. M'Laughlin to saying that he will have the witness here to-morrow morning, and not examine him at a later portion of the inquiry, which is my feeling, because really I think myself that leaving the matter over for this gentleman is too much.

Mr. Commissioner COFFEY.—What I was about to state upon the subject was this—and Mr. Exham laid stress upon it—we quite accede to the observations of Sergeant Armstrong that it would be incorrect in us to postpone indefinitely the period of the production of this gentleman. All that we can be expected to do is to allow you a reasonable time to produce him, and then comes the practical question—What is a reasonable time? We have adjourned twice for that purpose, and now, at this hour—past four o'clock—it is idle to suppose that we can go on with any business in the face of the declaration made by Sergeant Armstrong. What I propose to do now is, to make a rule that unless this gentleman be forthcoming to-morrow morning, at the sitting of the Court, you be precluded from producing him at any further period.

Mr. M'Laughlin.—I think that is very fair. I am sorry to be the means of delaying the proceedings in in any way.

Mr. Commissioner COFFEY.—I do not suppose it is necessary, but if you wish we can give you a summons for him now.

Mr. M'Laughlin.—I do not think it is necessary.

Mr. Commissioner EXHAM.—You keep the affidavit, Mr. Flanagan.

(The letters were then returned to Mr. M'Laughlin.)

Mr. Barry.—May I now mention, with regard to the depositions, that my friend Captain Ball has been looking for them amongst his papers, and he can find no trace of them. He has also been endeavouring to recall to his memory what might have happened as far as he had anything to do with them, and his strong impression is, that the depositions were sent to him. He thinks it is possible that they might have been re-

turned to the Castle, inasmuch as sometimes he gets directions to send them back. But his own impression is very much to the effect that, considering them useless as documents on which no further action could be taken, he, in all probability, destroyed them. His impression is to that effect, and he thinks that the great probability is that he did destroy them.

Mr. Commissioner EXHAM.—What is the exact date of them, because that there can be no question about it, we can write up to-night to the Under Secretary to know, and he will telegraph to us in the morning if they are there, and if so they will come down.

Sergeant Armstrong.—About the 18th April, 1870. That is as close as you can go to it. And although the Law Adviser's opinion is dated the 27th of April, it is an undoubted fact that that opinion was never communicated to the bench, as a bench generally, until the 6th of June.

Mr. Barry.—If any evidence was given to that effect, Captain Ball is in a position to prove that he did give them the opinion at the first moment that he was in an official position to do so.

Sergeant Armstrong.—It does not follow that he was sent the opinion contemporaneously with its date.

Mr. Newton.—The informations were on the 25th of April, 1870.

Mr. Commissioner EXHAM.—They are not properly called informations. The depositions were taken. Mr. Newton was presiding, I believe, and took them down, and Captain Ball was present; and the question is, what was on them? It is better to have the written document; there can be no mistake about that, and if we can we will get it. Perhaps we could sit at ten to-morrow morning by way of compensating for this loss of time.

Sergeant Armstrong.—I quite agree in that suggestion. As we have an opportunity of adjourning to-day, perhaps we can go on earlier to-morrow?

Mr. Commissioner EXHAM.—Is there any probability of your case finishing to-morrow?

Sergeant Armstrong.—Well, I should say not. I should say certainly not. The magistrates I consider as promovents here.

Mr. Commissioner COFFEY.—Here is the memorandum of the registrar—"On the application of Mr. M'Laughlin by affidavit to allow time for the production of an important witness, Joseph B. O'Neill, on behalf of the memorialists, and Sergeant Armstrong insisting that his clients would be prejudiced if forced to go into his case until O'Neill be examined and cross-examined, the inquiry was adjourned from this day till to-morrow morning."

Inquiry adjourned.

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SIXTH DAY.—TUESDAY, AUGUST 22, 1871.

Mr. Joseph Benedict O'Neill sworn; examined by Mr. M'Laughlin.

3564. Do you reside near this?—Yes.

3565. What is your business?—That of a farmer.

3566. Are you in a large way of business?—Not very large.

3567. You have a good deal of freehold property in this county, have you not?—A little.

3568. You are a Catholic, I believe?—Yes.

3569. Do you remember seeing the evidence of County Inspector Heard in the newspapers?—I do.

3570. Do you know Mr. Lyle?—I do, very well.

3571. He is a neighbour of yours?—He is.

3572. You and he are good friends, I suppose?—Oh, very good.

3573. Did you observe in Captain Heard's evidence that he referred specially to Mr. Lyle, as one of the persons anxious to put down drumming parties?—Yes, I saw that.

(Letter handed to witness.)

3574. I believe, in consequence of that, you wrote that letter?—I did.

3575. How far do you live from Mr. Lyle?—Very convenient—not more than five or six hundred yards away.

3576. Do you know Mr. Lyle's grounds?—Very well.

3577. Have you ever seen drumming parties on Mr. Lyle's grounds?—I have.

3578. Did you see them at the time they were entering the grounds, or while they were on them, or about them?—I saw them passing his house.

3579. You saw them passing his house?—Yes; in front of his house.

3580. That would be the lawn, I suppose?—Yes.

3581. Mr. Commissioner COFFEY.—Do you mean in from the road—on the lawn in front of his house?—Yes.

3582. Mr. M'Laughlin.—Did you first see them in the road?—No; I first saw them passing his house, and coming out on the road again. There are two gates, and they must have entered by one, and came out by the other.

3583. But when you saw them first were in the grounds?—In the grounds.

3584. Was that on any particular day of the year?—It was on the 12th of July.

3585. Do you know how long ago?—I dare say it is twelve or thirteen years ago.

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Mr. Joseph B.
O'Neill.

3586. Have you observed whether on these anniversaries there are bonfires kindled on Mr. Lyle's grounds at all?—I have.

3587. Mr. Commissioner COFFEY.—What date do you fix for that?—That would be within the last two or three years.

3588. Mr. *M'Laughlin*.—Was that on an eminence immediately beyond Mr. Lyle's house?—Immediately beyond it.

3589. And in his farm?—Yes.

3590. Within the last two or three years?—Yes.

3591. In his own farm?—In his own farm.

3592. I suppose you thinking it desirable that these facts should be stated wrote this letter?—Just so.

3593. About what time of the year are these bonfires burned?—The 1st of July is always the time.

3594. The first time you acquainted anyone having the management of this case with these facts was by that letter?—By that letter.

3595. I need hardly ask you, have you any feeling one way or the other against Mr. Lyle?—Not a bit.

3596. But you thought it well that this should be stated, having regard to what County Inspector Heard was reported to have said?—Precisely.

3597. You are a Catholic of exceptionally good position. Are these drumming parties offensive to you?—Well, they are offensive generally, I dare say; as regards myself I don't care.

3598. Do you know them to be party displays?—Certainly.

3599. Are they, in your opinion, dangerous to the public peace?—I would say so.

3600. Any display of that sort?—Any display of that sort.

3601. Flags on a church, and the like of that?—Yes.

3602. Is there a church at Donoghmore?—There is.

3603. Not far from where you live?—Just immediately at Donoghmore.

3604. And these displays take place about July?—Always.

Mr. *Joseph Benedict O'Neill* cross-examined by Sergeant *Armstrong*.

3605. How long are you residing at Donoghmore?—In or about fifteen or sixteen years.

3606. Was Mr. Lyle's brother living there at the time you came there?—I am not very sure about that, but he was there for some time after I came to the place.

3607. But was the present Mr. Lyle the proprietor when you came there?—He was.

3608. Was his brother alive at the time you came there first?—I don't know that he has a brother dead.

3609. You don't know? Did you know his mother?—Yes, I did.

3610. Was she alive when you came there first?—She was.

3611. Now, when was it you saw the drumming party on Mr. Lyle's lawn?—I think about twelve or thirteen years ago.

3612. Why do you think it twelve or thirteen years ago?—Well, I believe it to be that length.

3613. Will you swear it was not twenty years?—Yes, I would swear that. Certainly I would.

3614. Can you swear it is not twenty years. Did you take a note of the date?—No, indeed.

3615. How do you know it is not twenty years?—I recollect it very well. I was not there twenty years ago.

3616. How long were you there when it happened?—I would say about three years.

3617. You would say about three years. Did you make any note of it?—No note of it.

3618. Did you ever complain to Mr. Lyle about it?—Never.

3619. Did you ever give him any advice on the subject?—Never.

3620. Do you come here to represent that he is an encourager of Orange processions and drumming parties?—I do not.

3621. You don't?—I don't.

3622. Didn't you know on your oath that he is the very contrary?—I could not say that.

3623. Was he ever talking to you about it?—He never was.

3624. Nor you to him?—Nor I to him.

3625. Do you know whether he was at home or not when the party was on the lawn?—I don't know.

3626. Do you know that there are two gates to his place, one at the back and one at the front?—I do.

3627. Did they go in at the back gate and come out at the front?—I saw them coming out at the front; that is what we call the principal entrance.

3628. But you did not see them going in at the front?—I did not.

3629. Don't you know perfectly well in the first instance that Mr. Lyle was not there at all?—I don't know that.

3630. Don't you know that the gates were open, and that the Orangemen walking took advantage of that, and walked across the lawn unknown to him?—I know nothing of the sort.

3631. Did you ever complain to any human being of it?—Never.

3632. Was it very offensive to you?—Not the least.

3633. And you think that is about twelve or thirteen years ago?—I do.

3634. Now Mr. *M'Laughlin* asked you is it usual to have bonfires on the 12th of July, in Mr. Lyle's lawn or grounds?—I saw them two or three times.

3635. Tell me when?—On the 1st of July for the last two years before this.

3636. That is the 1st of July, 1870, is it?—No, that is the year before this.

3637. The last two years. Give the date of the year?—The 1st of July, 1869 or 1870, it would be.

3638. Is 1870 the year it commenced in?—No, 1869.

3639. Sixty-nine?—Sixty-nine.

3640. Were there any people about it?—Oh, I could not say whether there were or not.

3641. Where were you when you said it?—At my own house.

3642. What was it like?—Oh, like a blaze of light.

3643. How long did it last?—I could not say. I saw it for several minutes. I did not see it extinguished. I did not see it burned out.

3644. You did not see it burned out?—No.

3645. What time was it, in the day or night?—In the night.

3646. Did you complain of that to anybody?—Oh, I mentioned it, but I cannot say—

3647. Tell me any human being you ever mentioned it to?—I did not complain of it.

3648. Tell me any human being you ever mentioned it to; there is a wide field for you?—I mentioned it to several persons.

3649. Tell me any person you mentioned it, except in this letter?—I cannot say.

3650. Did you ever mention it to Mr. Lyle himself?—I never did.

3651. Is he your neighbour?—He is.

3652. And you were on good terms?—On very good terms.

3653. And you never complained to him?—No.

3654. Nor gave him any caution about it?—Never.

3655. Are you a magistrate?—No.

3656. You would like to be one?—No.

3657. Are you looking for it?—I am not.

3658. It has been mentioned about you?—It has.

3659. Would you be fit for a magistrate?—I would not.

3660. On the 1st of July, 1870, you saw it?—Yes.

3661. Are you sure about that. Will you swear that?—I would expect it would be the 1st of July.

3662. Will you swear you saw it on the 1st of July, in Mr. Lyle's grounds?—I saw it on the 1st of July for the last two years before that.

3663. What is the meaning of "for the last two years before that"; give it a number?—The year before this was 1870.

3664. Will you swear you saw it on Mr. Lyle's grounds, on the 1st of July, 1870?—I have just told you what I saw.

3665. Well, do so again?—I won't.

3666. On your oath—I now tell you I impeach your credit. Did you see it on the 1st of July, 1870?—I saw it on the two firsts of July last—

3667. On the 1st of July, 1870. I will have no prevarication. Answer the question. On the 1st of July, 1870?—Not answered.

Mr. Commissioner EXHAM.—Last year was 1870, Sergeant.

Sergeant *Armstrong*.—I won't be baffled in that way.

3668. To *Witness*.—On the 1st of July, 1870—do you swear you saw it there?—I do.

3669. You do?—I do.

3670. How long did it last?—For a few minutes.

3671. Was anybody at it?—I don't know.

3672. How near were you to it?—I might be a quarter of a mile from it.

3673. Where were you?—At my own house.

3674. Is it a quarter of a mile from your own house to this hill you talk about?—I would expect it is.

3675. Did you hear any noise?—No noise.

3676. Nor cheers?—Nor cheers.

3677. Could you see any people?—No; it was dark.

3678. Surely there was light—it would make a little light about it?—I did not see it, nor did I trouble myself about it.

3679. You do trouble yourself greatly about it, and other people too?—At that time.

3680. Did you or anybody else light any bonfire on your ground?—Not that I know of.

3681. On John's Eve?—No.

3682. Are you sure of that?—Very sure.

3683. Did you see any of them in your neighbourhood on John's Eve?—I saw them in the neighbourhood.

3684. Did you ever complain of them?—No.

3685. Do you see anything wrong in them?—There would be just as much wrong in them as in any other.

3686. Do you see anything wrong in a fire on John's Eve?—These were more convenient to me.

3687. Do you see anything wrong in a fire on John's Eve?—One is just as wrong as the other.

3688. Did you see anything wrong in a fire on John's Eve?—I have answered the question.

3689. You have not I assure you?—I say one is just as wrong as the other. I say both are wrong.

3690. You think both are wrong?—Both are wrong.

3691. Did you ever go about on John's Eve?—That is not my business.

3692. Did you make it your business?—No.

3693. Did you find fault to anybody?—No.

3694. Did you ever advise the people not to light them again?—I might.

3695. But did you?—I don't know, but I would put them down.

3696. In '69, was it the same as last year?—It was.

3697. You saw nobody, and you made no complaint?—Not answered.

3698. Were you ever speaking in your life to Mr. Lyle on the subject of Orange processions and Orange marches?—Not that I recollect. I don't recollect that I did.

3699. Did you see a ditch of your own on last John's Eve on fire?—I did not.

3700. Did you see the fire lighted in it?—I did not.

3701. In a furze ditch?—I did not.

3702. You never lighted a fire or had anything to do with it, I take it for granted?—No.

3703. You say you don't look upon Mr. Lyle as a promoter of Orange walks or Orange drumming parties?—I do not.

3704. Do you believe he is?—I believe he is not.

3705. You believe he is not?—I believe he is not

3706. Listen to your letter—

"DEAR SIR,—Referring to the evidence of Inspector Heard at the Dungannon inquiry, I find he says that Mr. Lyle is most anxious to put down drumming parties. Now, I happen to live close to Mr. Lyle, and for some years past, on each 1st of July, I can see a handsome bonfire blazing on the hill immediately above Mr. Lyle's house, inside his farm."

Is that true "for some years past"?—That is true.

3707. And you mean by that '69 and '70?—I do.

"A handsome bonfire blazing on the hill immediately beyond Mr. Lyle's house."

3708. Eh?—Yes.

3709. Did you not in this letter intend to state a grievance and complaint against Mr. Lyle?—No; I did not.

3710. Did you intend it as a reflection on his character as a magistrate?—No.

"This, you will say, is not exactly the way to put a stop to Orange displays. It is simply a notice to his neighbouring Orangemen to be in readiness for a display on the following 12th."

3711. You don't mean any imputation on Mr. Lyle as a magistrate?—No.

3712. Though by your letter you say he, by lighting a bonfire, incited the Orangemen to march on the 12th of July?—Just so.

"Well, there is a neat little church in Donaghmore, very near to Mr. Lyle's house, and on each anniversary flags are to be seen floating from its roof, where they remain for several days. If Mr. Lyle was anxious to have a stop put to drumming parties, he would not allow such insulting emblems to remain on the church for a single hour, as one word from him would put an end to it. Some years ago I saw a large drumming party, on the 12th of July, enter Mr. Lyle's grounds, play the usual tunes, and then retire by another gate. Now, sir, if such things show anxiety on the part of Mr. Lyle to put a stop to drumming parties, I leave you to judge."

3713. Now, did you see that drumming party enter Mr. Lyle's ground?—No; I saw them in the ground.

3714. What business had you to write that you saw them enter—

"I saw a large drumming party on the 12th of July enter Mr. Lyle's grounds, play some tunes, and then retire by another gate."

Did you see them enter at all?—I saw them in the grounds.

3715. Did you see them enter?—Not answered.

Mr. Commissioner COFFEY.—Can you not answer the question?

Witness.—I did not.

3716. Sergeant *Armstrong*.—What business had you to write that, when it is not true?—They could not be there without entering.

3717. Did you see them enter?—No.

3718. Is not the letter then false in that particular? Take it into your hand?—I did not see them enter.

3719. Is it not false?—I did not see them enter.

3720. Look at the letter?—I know all that is in the letter.

3721. Mr. Commissioner COFFEY.—It is an untrue representation or an incorrect representation to say that you saw them enter the gate?—I did not see them enter.

3722. Sergeant *Armstrong*.—Then you don't know how they entered?—I don't know how they entered.

3723. Don't you know the back gate?—I do.

3724. Do you know whether Mr. Lyle was at home at all or not?—I do not.

3725. You came here as an accuser. Is there anything else you can tell against Mr. Lyle, your neighbour?—Nothing.

3726. Have you any complaint against him as a magistrate?—No.

3727. Or as a neighbour?—Not the least.

3728. Or as a gentleman?—Nothing.

3729. In any way? In any way?—In any way.

3730. Is he a quiet, inoffensive country gentleman, as you believe?—Quite so.

SIXTH DAY

August 22.
Mr. Joseph B.
O'Neill.

SIXTH DAY.

August 22.

Mr. Joseph B.
O'Neill.

3731. Mr. *M'Laughlin*.—Does Mr. Lyle always be from home on the 1st of July in each year?—I don't know indeed.

3732. You have been asked whether or not you are anxious to be a magistrate. Were not overtures made to you to become a magistrate, and did you not refuse the honour?—I did.

3733. Your credit has been impeached. You did not commit perjury here in court I presume?

Mr. Commissioner COFFEY.—The inference fairly to be drawn from the letter is—that having read County Inspector Heard's evidence, he says that Mr. Lyle does display sympathy for these processions, inasmuch as he says there was a bonfire blazing in Mr. Lyle's place on this anniversary, and the church was decorated with flags, which he says (this is the inference to be drawn from the letter) Mr. Lyle, by his influence, could prevent. That is the sum and substance of his complaint. I am not saying whether it is correct or well-founded, but that is the inference to be drawn from the letter.

3734. Mr. *M'Laughlin*.—I suppose when you more carefully considered the matter you remembered the fact, and you did not see the party in the act of entering?—Yes.

3735. But I suppose you are of opinion that they could not be in without entering?—I don't think they could be in without entering.

3736. I think not. Let me read the rest of the letter. The Sergeant stopped at the word "judge," a very appropriate place for a sergeant to stop at:—

"If you wish me to give the above in evidence I will go into town any time you send for me.

"Yours respectfully,

"J. B. O'NEILL.

"P.S.—I intended sending this to the *Star* for insertion, but I now take the present course."

That is some slight evidence of your *bona fides*. That is all.

Mr. Commissioner COFFEY.—No one can complain of him coming forward in a manly manner, and stating what he thinks is a grievance and cause of complaint. I see no objection to it. The letter is inaccurate in this respect, that it says he saw the party entering. Mr. Lyle, if he chooses, can give any explanation he desires to make in the matter.

Sergeant *Armstrong*.—Of course he will.

Mr. *M'Laughlin*.—That closes our evidence.

3737. Mr. Commissioner COFFEY (to witness).—I want to know of your own knowledge of this place and neighbourhood do you consider these drumming parties offensive to the Catholic population?—Decidedly.

3738. You have been asked about St. John's Eve. Has that anything to do with party or politics?—Not that I am aware of.

3739. I believe it is the celebration of a religious festival?—Yes.

3740. Mr. *M'Laughlin*.—I believe all parties kindle the John's Eve bonfire?—I don't know.

Mr. Commissioner COFFEY.—If it is offensive to any portion of the community it ought to be discontinued.

Mr. *M'Laughlin*.—Exactly. Like case like rule.

Mr. Commissioner COFFEY.—You have, I presume, now closed your evidence?

Mr. *M'Laughlin*.—Yes; and having regard to what I have already said as to the incorporation of the official documentary evidence, my case is now closed.

Mr. Commissioner COFFEY.—Before you close your evidence I wish to read this document which we have been furnished with by direction of the law adviser. It is a copy of an opinion or minute he sent forward to several petty sessions benches in Ireland, and it refers—

Sergeant *Armstrong*.—Was it sent to this one?

Mr. Commissioner COFFEY.—No. It is dated 29th November, 1870, and is addressed to the magistrates of one petty sessions, but was sent to several on the application of the magistrates themselves.

Dublin Castle, 29th November, 1871.

GENTLEMEN,—I am directed by the Lord Lieutenant to acquaint you that your letter of the 26th ultimo, on the subject of party demonstrations in your district, having been brought under the consideration of the law adviser, he has given his opinion thereon as follows:—Inasmuch as assemblages such as are referred to usually constitute an obstruction of the free passage of the public thoroughfare, the magistrates have jurisdiction to deal with such offences under the 14th and 15th Vic. cap. 92, sec. 13, paragraph 3, which has recently been enforced in Dublin with reference to bands parading the thoroughfares. When the assemblage assumes the form of a procession, with arms or party flags, or music, so as to come within the provisions of the Party Processions Act, 13 Vic. cap. 2, it may, of course, be dealt with under that act. In addition to the before-mentioned cases every assemblage of a large number of persons, which, from its general appearance and accompanying circumstances, is calculated in the opinion of reasonable men to excite terror and alarm, or to produce danger to the tranquillity and peace of the neighbourhood, is an unlawful assembly, and all persons taking part in it are indictable for misdemeanor at common law. In judging whether an assembly is of this character or not, the magistrates must take into consideration the nature of the assembly, the way in which it is brought together, and the conduct and demeanor of the parties, which are all questions of fact for the magistrates to determine for themselves. In cases of such unlawful assemblies as last mentioned, the constabulary should summon the most prominent of the parties, and the magistrates should, in serious cases, receive informations and send the parties for trial in the ordinary way, and in minor cases bind the parties to good behaviour, according to the ordinary course. As these displays, which are so disastrous to the good order and well-being of the community, do not appear to be hitherto effectually dealt with, the magistrates will act with prudence in announcing publicly from the bench their resolution firmly to enforce the law against these displays for the preservation of the peace and the maintenance and tranquillity and security of the district.

Mr. *M'Laughlin*.—I have the section here. I need hardly remind the Commissioners that the previous opinions of the law adviser upon this particular point is already in evidence before you.

Mr. Commissioner COFFEY.—Yes, we have them.

Mr. Commissioner EXHAM.—The former did not, as well as I recollect, call attention to the 14th and 15th Vic.

Mr. *M'Laughlin*.—No. That is new, certainly.

Sergeant *Armstrong*.—Nothing can be clearer than that under the Summary Jurisdiction Act, if a crowd obstruct the public thoroughfare there may be a summary conviction in respect to it. But at the same time, with every respect to the law adviser, it would be extremely difficult to bring drumming parties within any such act. I have not heard the slightest evidence that they ever obstructed the public thoroughfare, or prevented the public from passing, and to deal with the offence as an obstruction of the public thoroughfare, instead of taking the bull by the horns, would really appear to me to be trifling with the subject.

Mr. Commissioner COFFEY.—Your eminence and experience makes me hesitate in expressing an opinion contrary to yours, but when I have a decided opinion I think it right to express it; and in my opinion if parties come in through a town, and crowd a street or occupy the passage, and did that for no proper object or no legitimate purpose, no matter of necessity, such as going to a funeral, or going to a fair or market, but come there for the purpose, as appears upon the evidence, to challenge a different party to combat and fight—that is clearly an obstruction of the thoroughfare.

Sergeant *Armstrong*.—I certainly would recommend the magistrates not to act under that section, with the peril of an action staring them in the face. Besides it would be trifling with the matter altogether. It would be a side wind attempt to put down what should be put down by the strong arm of the law. And there is nothing to show that there is any obstruction to the thoroughfare, no carriage stopped, or cart, or single individual.

Mr. Commissioner COFFEY.—We have it here that

hundreds of people came into this place drumming and fifing.

Sergeant *Armstrong*.—That is no obstruction of the thoroughfare. There must be some person or thing obstructed. I think it is a trifling way of getting out of a difficulty.

Mr. Commissioner EXHAM.—I think, too, it would be a trifling way of getting out of the difficulty if the parties should be indicted and sent for trial for a much higher offence.

Sergeant *Armstrong*.—It would really be playing with them instead of dealing legally.

Mr. *McLaughlin*.—As one of the Commissioners has referred to the evidence allow me to remind you of one or two passages, which look very like proving an obstruction. There is the express evidence of Dr. Mooney, who swore he was interrupted in the free passage of the road, and his horse terrified; and the evidence of the Rev. Mr. Quinn, our first witness, who stated that when discharging clerical duty, attending the sick at nightfall, he is obstructed because he is afraid.

Sergeant *Armstrong*.—It is not fear; it is a physical obstruction that is contemplated.

Mr. *McLaughlin*.—If I was afraid I would keep out of the way of danger. Further, we have evidence that people coming from the chapel on a certain night were physically obstructed. So that if anything does turn on it—(I give no opinion one way or the other)—but if anything does turn on it, there is abundant evidence to assist the action of the bench.

Sergeant *Armstrong*.—Nothing does turn on it, for several reasons. In the first place the magistrates'

attention was never called to the section. Whatever reasons there were for sending it elsewhere, the opinion never came here. I suppose the fact was that these processions were so composed in the particular district as practically to form an obstruction. To the particular district where that state of things arose the law adviser's circular was addressed. It never came here.

Mr. Commissioner COFFEY.—Never.

Sergeant *Armstrong*.—It may be fair to say that it appears to me to be a very far fetched suggestion to think that the magistrates here are reflected on for a moment for not thinking of what originated in the mind of the law adviser.

Mr. Commissioner COFFEY.—I never intended for a moment to reflect on the magistrates for not taking action upon a matter that never was brought under their notice. But now that it is brought under their notice. I give my clear unhesitating opinion that if a number of persons come into a town for no legal or lawful purpose, having no legitimate business for doing so, and occupying the thoroughfare that the well-disposed and orderly portion of the community would otherwise have freely open to them, that, in my judgment, is as clear an obstruction as can be imagined.

Mr. Commissioner EXHAM.—Language is of no force if it is not.

Sergeant *Armstrong*.—The magistrates may consider that hereafter, but it is perfectly irrelevant to the present inquiry, as it appears to me. The learned counsel then stated at some length the case of the magistrates, after which evidence on their behalf was proceeded with.

Courtney Newton, esq., J.P., sworn; examined by Sergeant *Armstrong*.

Sixth Day
August 22
Mr. Joseph B.
O'Neill.

3741. Mr. Newton, when were you appointed to the commission of the peace for this county?—In June, 1868.

3742. I believe you had an extensive acquaintance with the neighbourhood before that—you had a residence here?—Yes.

3743. You know the neighbourhood of the county well?—For nearly fifty years.

3744. Will you state your feelings and opinion with respect to drumming parties?—I believe that they are most offensive to the Roman Catholic inhabitants of Dungannon. I have always—at least for the last twenty years I would say discountenanced them in every way that I could. To me they were extremely annoying in a personal point of view, particularly before Captain Ball came here, for I was always afraid—they passed my door—at least not my door but the road passes my house coming into town, and I was afraid of some disturbance taking place if they went into the town, and consequently I was very much relieved when a resident magistrate was appointed here whose duty was specially to attend to these things.

3745. Then you disapprove of them?—Certainly.

3746. And are of opinion that they should be suppressed and prevented?—I think so, and I have always been persuaded that there ought to be a law to suppress them, and I am ready to do that if the Government think proper to do so.

3747. Since Captain Ball came here, did he generally speaking co-operate with the local magistrates in relation to these party cases and the attempt to suppress these drumming parties?—Until his evidence at the police inquiry—I considered—and we have discussed the question frequently—that we had no difference of opinion on the subject, and we were both anxious to do everything that was necessary for the purpose, if we could have seen our way.

3748. Did you, so far as you now can review your own conduct exhibit to him or to anybody else since your appointment as a magistrate any indisposition to put an end to those drumming parties?—Never—in heart or in action.

3749. Have you done what lay in your power as a

magistrate to put an end to them?—Yes. No, I must say I did not—the question about the law of the case, the craze as it was by a very intelligent witness that we are labouring under—that I will explain. That view has a view common to the Bench. I will explain how the craze affects my mind.

3750. Sergeant *Armstrong*.—You may as well do so now.

Mr. *McLaughlin*.—This is highly dramatic.

Sergeant *Armstrong*.—I will have no remarks made on the witness while he is under examination.

Mr. *McLaughlin*.—Then it is not highly dramatic.

Sergeant *Armstrong*.—I will have no remarks made as to witness. You may cross-examine him with as much noise as you like.

Mr. *McLaughlin*.—Noise with Mr. Newton; the idea could never enter my mind.

Sergeant *Armstrong*.—There should be no suggestion now that anything Mr. Newton said is highly dramatic.

Mr. *McLaughlin*.—I withdraw it. Will that do?

Sergeant *Armstrong*.—The witness is on his oath, and his evidence ought to be respected.

Mr. *McLaughlin*.—I will respect his oath never fear.

Witness.—I only want to state the explanation which I gave to Captain Ball in my letter, of which I believe I have got a copy; and to do so distinctly I would just ask you would you be so good as to let me have the opinion sent by the law adviser? I will then show you the point on which difficulty in my opinion arises.

3751. Mr. Commissioner COFFEY.—Whose opinion?

Witness.—The opinion you read this morning. Now here is the whole difficulty of the case—

“In addition to the before mentioned cases every assembly of a large number of persons, which from its general appearance, and the accompanying circumstances, is calculated, in the opinion of reasonable men, to excite or alarm.”

Now, so I hold that to make a man a criminal the offence must be in the criminal, and that it is not the apprehension that some other cause, or from some other parties that would create him a criminal.

Mr. Commissioner COFFEY.—I am sorry to say that

SIXTH DAY.

August 22.

Courtney
Newton, esq.,
J.P.

I differ from you in that *toto coelo*, and the Sergeant, I venture to say, will tell you the same thing.

Mr. *M'Laughlin*.—I think Mr. Newton has a right to have his opinion.

Witness.—I say, and I can show that I only want to be advised, or furthermore—but excuse me, I must have this advice from the authorities—if the Government give directions distinctly, that these drumming parties, without having in themselves any intent of—

Mr. Commissioner COFFEY.—In their own minds, in the minds of the drummers—

Witness.—Excuse me, I don't say so.

Mr. Commissioner COFFEY.—I merely want to understand your evidence, in order that we may have no mistake about it.

Witness.—I mean, suppose a drumming party comes along a road—you have it already in evidence that certain of these drumming parties, when they are in the country, have not the same dangerous effect that they would have if they came into town or near the town—I believe that—but we will take one of these drumming parties in the country, and suppose that this drumming party intended to go neither into the town or near the town. Well, I ask the Government to say if these parties are drumming along the roads in the country, and that information to that effect is laid before us, and further that it is laid before us, that if they are attacked by another party along the road it would create a riot, would it be right to send the parties for trial? I only want a distinct reply from the Government to that point. And I have no hesitation on my own behalf, and I may say on behalf of the magistrates, that if it is laid down distinctly and in intelligible terms—and not by quoting from law books—but distinctly laid down applying to the facts of that case the law, there is not a magistrate on the bench of Dungannon but will act upon it; and I say the feeling on my own mind about these drumming parties is, that we have a right to stop them, if they come into the town, if we believe that it will lead to rioting and a breach of the peace; that is, if they come into town under ordinary circumstances, I think we would be perfectly right in stopping them; and so on the 12th of July we did stop them, and blocked the street, and did not allow them to pass. But on other occasions, when they are not attacked, and it won't lead to a breach of the peace, we feel paralyzed as to our opinion about the law. We may be utterly astray. It may be really a craze, as mentioned here, and I won't affect to pretend that I am absolutely right. I only show the motive which guided me in the discharge of my duty with respect to these transactions.

3752. Sergeant *Armstrong*.—If you receive instructions from the law adviser or advice from the law adviser that any species of drumming party is illegal, regardless of surrounding circumstances at all; that the mere fact of drumming in numbers is illegal, are you prepared to act upon it?—Certainly, and every magistrate on the bench, I believe.

3753. Under any given circumstance, whether in the country or in the town, if you get a general direction?—Certainly.

3754. You don't conceive you have got advice to that effect—that under all imaginable circumstances you may summon and punish drumming parties?—Certainly not.

3755. And if you get such directions or advice, you are prepared to act on it?—Certainly.

3756. And incur the responsibility of carrying it out?—Certainly.

3757. Action or no action?—Yes.

3758. And whether that emanates from the law adviser, or becomes a statutable enactment, would you be glad of it?—I certainly would.

3759. And is it your desire and opinion that they ought to be put down?—I certainly would do so.

3760. But you don't think there is sufficiently clear instructions for the guidance of the justices?—That is my opinion.

3761. Now you were not here—at least you were not acting as a magistrate—when some of the matters

mentioned in this inquiry took place. You did not act as a magistrate until the event of the 1st July, 1868. That was recently after your appointment?—That was the day the Orangemen returned from the Lisburn excursion; I was not here at all that day.

3762. Were you at home at all that day?—No; I was not at home the day that took place; that was the 1st July, 1868.

3763. Now, the night of the burning of the effigy, as it has been introduced, did you go out that night?—Yes.

3764. State what occurred?—I was dining out that day with a cousin of Colonel Knox, another Colonel Knox. While I was there a message came, I believe by a policeman—I did not see the messenger, but I believe it was a policeman—to say they were afraid there would be a row in the town. The three of us went up to the town, and when we got to the top of Scotch-street, the top of the hill, we saw a crowd, or at least we heard a noise down at the foot of the street. I am not sure I saw anything, but I heard a noise. Colonel Knox and I went on quickly before the policemen, leaving word for the policemen to come after us as soon as possible. I hurried on; we both hurried on, thinking if we had any influence at all that we would endeavour to separate the parties, and keep the peace, at all events—

Mr. *M'Laughlin*.—I don't want to make any technical objection to what is fairly evidence.

Mr. Commissioner COFFEY.—You need not tell us that.

Mr. *M'Laughlin*.—But what was passing through his mind cannot be evidence.

Mr. Commissioner COFFEY.—Certainly. He is answering a charge of acting partially and unfairly, and he is entitled to say on his oath what he has said.

Mr. *M'Laughlin*.—I would not take the liberty of making the objection, except that—as you will remember—Sergeant *Armstrong* several times during the examination of the witnesses held me as strictly as if we were at *Nisi Prius*.

Mr. Commissioner COFFEY.—He did not object to any matter like this.

3765. Sergeant *Armstrong* (to witness).—Now, go on.

Witness.—Well, we went down there; after a while, in fact we had hardly got there, when about the same period there seemed to be a burst up the town from the railway bridge or Fowl-market, and evidently there were two parties in opposition; when they got near us I saw stones flying towards both parties; I could not tell why in the world they threw stones then at either side; I was struck with a stone, and some windows in Moon's hotel, and I believe in the house beyond his were broken. The policemen were behind us, and I thought it was wise to retire as fast as possible upon the police, and I went back as fast as I could; my leg was a little sore, but nothing to signify. When they came down, one party went down by Barrack-street, a side street, and then went out of the town. We went back and we found a tar-barrel, or the remnants of a tar-barrel up the street, and the police put it out. There was no more disturbance that night. There was some talk of further work up at the top of Scotch-street between the different parties.

3766. Had you foreseen any disturbance?—Not at all; it was such an unexpected thing, the burning of an effigy at all.

3767. You did not foresee any disturbance or anticipate it that night?—Certainly not, particularly as the parties although close to the town—outside the town—if they did not pass through the town, I would have looked upon it as a mere political demonstration that was perfectly legitimate on either side.

Mr. Commissioner COFFEY.—Nor do we attach the least importance to it.

Sergeant *Armstrong*.—There was a great deal said of it.

Mr. *M'Laughlin*.—A great deal was said of it, and more will be said. There were shots fired and stones thrown. I don't know what the magistrates' view of that may be.

3768. Sergeant *Armstrong* (to witness).—Did you hear any shots fired up at the effigy?—Oh, no; I did not at the effigy.

3769. Mr. Commissioner *COFFEY*.—Did you hear any shots at all?—My impression is I did hear shots, but I really cannot call it to recollection.

3770. Sergeant *Armstrong*.—But could you hinder them?—Not at all; we could not hinder them.

3771. Did you leave anything undone that you could do that night—did you do all you could at the time?—I did the utmost I thought right, and that was to get the town quiet as soon as I possibly could; and I can tell you I cared very little about the rest of the story but to keep the town quiet.

3772. What time of the night was it you arrived?—I should think it was at half-past nine o'clock.

3773. At that time it was quite dark?—Well, it was a darkish night.

3774. Did you know any of these people?—No; on either side.

3775. Did you think that the exigencies of the case were best met by restoring the town to quiet, and letting the thing blow over?—That was my idea; I thought it the best thing to do.

3776. Do you know anything personally with respect to the investigation about the breaking of the chapel windows?—I know all about it.

3777. Kindly tell us all about what was done—first when was it?—The day after the chapel windows were broken; on that morning, as I was on the way to my office, I was spoken to by the police stating that there was a pane of glass broken in the house of a man named Hewson, and that the windows of the Catholic chapel were broken by a drumming party. I ordered summonses to be got out for any that were known, and the police to come to me afterwards to discuss it over, and see who could throw light on it as witnesses in the case. They came to me and they got summonses for the parties, and for every witness that could throw light on it. They were summoned for the next petty sessions day, which I believe was the 26th of April—I am not sure, but I think it was. The magistrates could not sit in the court-house, I believe it was repairing, but we sat in the next room, the chamber. There was an application made by Mr. Young, I think, on the part of the accused to postpone the trial on account of the late service of the summonses, and the want of material witnesses. The magistrates came to the conclusion that it was necessary, and that they were bound to grant that adjournment, and they granted it. I then proposed that the magistrates, after the court would be over, should go into some sort of inquiry with respect to the breaking of the chapel windows, for the purpose of eliciting if any evidence could be got about it. That rule was put on the book by me, I think I was chairman, and it is in the book, I have seen it.

3778. Before you go further—did the summonses come on in the regular and usual course in the book?—Yes.

3779. Some business was disposed of before you arrived at it?—I believe so.

3780. And then the case was called on?—Yes.

3781. And then there was an adjournment?—Yes.

3782. I have the entry here “adjourned at defendant’s request not having time to summon witnesses”—that entry you think is in your own handwriting?—Yes.

3783. You have stated you suggested that after the rest of the business was disposed of, you should hold an investigation into the facts?—Yes, to see who were the witnesses.

3784. And to ascertain who would be the proper witnesses?—Yes.

3785. Was anything said as to that by any other magistrate, are you aware—

Mr. *M’Laughlin*.—I want to know from the Commissioners if they think this is legitimate evidence.

Mr. Commissioner *COFFEY*.—Certainly. You examined into it. There is a distinct charge that a magistrate on that occasion used expressions that conveyed to the by-stander that he thought the breaking of the chapel windows a trivial matter.

Mr. *M’Laughlin*.—Allow me to remind you that when we proposed to give second-hand testimony of transactions, the Sergeant interfered and said “cannot the parties themselves be produced?” I must confess I am a little astonished at this. I now say deliberately that what is proposed to be given in evidence now is not evidence—the gentleman whose expressions Mr. Newton is about to narrate being in court and ready to be examined. I say you cannot give this secondary evidence.

Mr. Commissioner *COFFEY*.—I think it is legitimate evidence, and if on no other ground than this—that you yourself have given secondary evidence of his expressions.

Mr. *M’Laughlin*.—It was primary evidence by us of the expressions.

Mr. Commissioner *COFFEY*.—You gave evidence that what fell from the magistrate reached the by-standers. He is a competent witness; he was a near by-stander.

Mr. *M’Laughlin*.—I thought he was being examined as a magistrate.

Mr. Commissioner *COFFEY*.—Does that prevent him being a by-stander on the occasion?

Mr. Commissioner *EXHAM*.—And further, Mr. *M’Laughlin*, you gave evidence of what Mr. Newton said on the occasion.

Mr. *M’Laughlin*.—The evidence of the witness as to what he said will be perfectly legitimate and neither directly nor indirectly would I suggest it was not, but there is a distinction between what Mr. Newton says and deposes to with respect to him in the box, and the secondary evidence, as I emphatically call it, of what another gentleman said, that gentleman being here to be examined. Do you intend to take Mr. Newton’s version of the story?

Mr. Commissioner *EXHAM*.—Certainly.

Mr. *M’Laughlin*.—I will formally object.

Mr. Commissioner *EXHAM*.—Very well.

Sergeant *Armstrong*.—It is only necessary to reflect on the inquiry, and what is that has to be determined to show that every word and act of the magistrates is evidence in whatever way it is brought out.

Mr. Commissioner *EXHAM*.—Everything that passed between the resident magistrate and the police, for instance, with respect to stopping the demonstrations, is evidence on the questions of how the law is administered.

3786. Sergeant *Armstrong* (to witness).—You expressed the wish you stated. I find it recorded in the book—“After the business the Court will take up the case of the breaking of the windows of the chapel”—there it is recorded in your own handwriting—“after the business.” Now, that was a suggestion that after the business proper would be disposed of you should hold a sort of inquisition as to the proper witnesses to be summoned. Was any dissent expressed by any magistrate? State what occurred?—I wrote that down before any dissent was expressed, and I don’t know exactly how it came up again, my impression is it came up a little after.

3787. State what came up?—The same subject—as to the investigation afterwards. I think some question was asked by Sub-Inspector Smith, I forget how. But then Mr. Stanley said he would be no party to such an investigation as it was a trivial offence. I thought and knew perfectly well that such an expression would look very bad to those about, no matter what was intended to be conveyed by it, and I said something—I rebuked him in some way, or a chairman made some observation, I don’t know what the observation was.

3788. But you dissented from that idea?—Clearly, openly, and distinctly. There was another magistrate also there who did the same, and used language which I remarked at the time.

3789. What did he say?—He said, “Why, it is sacrilege.” That was Mr. Nicholson. He used that expression, and seemed to take the view I took about the matter. That was the whole story.

3790. Did Mr. Stanley say anything further as to its not being a matter to hold a private investigation about?—Yes.

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3791. State what it was—the substance of it—no man could give the exact words?—Mr Stanley then went on to say what was his point of view, and he said that it was wrong towards the accused—the persons already accused—to have a private investigation, to which they were not parties.

3792. At which they would not be present?—Yes, something of that sort.

3793. Sergeant *Armstrong*.—Your proposition was, that you should go into it after the business, and he said that he did not think that that ought to be done.

Mr. Commissioner COFFEY.—He said more than that.

Sergeant *Armstrong*.—I asked the whole of it. I am only giving the substance of it.

Mr. Commissioner COFFEY.—But you are giving it incorrectly.

3794. Sergeant *Armstrong* (to witness).—State all that occurred?—That is all I recollect. If you ask me any question I will answer you. I don't recollect anything further.

3795. Did Mr. Stanley express any opinion as to the propriety—answer as fully as you like, and be done with it—of holding this quasi private investigation after the business was over? Do you think you have already answered the question?—I cannot add to what I have already said.

3796. Repeat it, as there is some opinion that it is not very clear?—Mr. Stanley said it would be unfair, or something like that, to the accused, or to the persons charged, to hold an investigation at which they were not parties, or represented, or something of that kind, and thereupon I find this thing scored out, about “after the business the Court will take up the breaking of the chapel windows.”

3797. Did you erase that then?—The question was then put to the vote, and it was decided that we should not do so; and then I struck it out.

3798. And it was allowed to take the usual course, I suppose?—Yes.

3799. Then the proceeding—tell us what became of it ultimately—tell us all about it?—It came on the next petty sessions day, as well as I recollect, and Mr. Moloney, resident magistrate of the county, attended. The Sessional Crown Prosecutor, Mr. Cecil Moore, attended to prosecute on behalf of the police. The accused were represented, as well as I recollect, by Mr. Cochrane, of Armagh, and another solicitor; I am not sure of that, but I think so. The case was gone into, and a preliminary discussion arose as to who was to begin, and it was suggested, I believe—

3800. Mr. *McLaughlin*.—What particular date are you referring to?—I believe that was the 26th April, 1869; I am only speaking from memory.

3801. Sergeant *Armstrong*.—Quite so; go on?—My impression is, that a discussion took place as to whether the Crown should be heard first, or what course should be taken, and it was suggested, I cannot tell by whom or how, that Mr. Moloney, being the resident magistrate, should, as the case went on, take down the depositions, which could be then turned into informations, if the magistrates thought proper, at the end of the case.

3802. Did he do so?—He did so.

3803. On that occasion then the depositions were all taken?—All taken, and signed, I believe.

3804. Was a resolution arrived at as to what should be done with them?—After it was all over we retired to the magistrates' room to discuss the matter, and some of the magistrates thought that there was sufficient disclosed on the informations to send the case forward for trial; others thought there was not; and while this was discussing there was no decision come to by the magistrates on the point. But while this was under discussion in that way, it was suggested that the proper way to have all working together was, to send up the depositions to the law adviser to obtain his opinion, and act upon it.

3805. And was that the unanimous conclusion you arrived at?—That was the unanimous conclusion we arrived at.

3806. Did Mr. Moloney accordingly send up the depositions—did you understand he did?—He did; he was deputed by us to do so, and I am perfectly satisfied he did.

3807. And did you see the opinion when it did come back?—Yes, it was read—I think it was read from the bench.

3808. Mr. Commissioner COFFEY.—I have the substance of it before me.

Witness.—Yes, it was read in full from the bench.

3809. Sergeant *Armstrong*.—I believe on the 24th of May, and then the case was dismissed?—The case was dismissed.

Mr. Commissioner EXHAM.—That was a summons under the Party Processions Act altogether for an unlawful assembly.

Mr. Commissioner COFFEY.—Yes. And the law adviser's opinion is this:—“No breach of the Party Processions Act is disclosed in the accompanying informations. The present summons ought therefore to be dismissed.” And dismissed it was. “If the assembly in question threw stones at houses or the chapel, or acted with violence and turbulently creating terror or alarm, the parties may be summoned for a riot if the evidence warrants it.”

3810. Sergeant *Armstrong* (to witness).—You tell me Mr. Cecil Moore was the sessional Crown solicitor attended on behalf of the Crown to prosecute?—Yes.

3811. Acting for the police?—Yes.

3812. And did he issue any further summons?—No.

3813. Nothing further was done?—No.

3814. Did he hear this opinion read?—I think he was not here at all. I am not sure, but I think not.

3815. The complaint is that the defendants, with others, in the town of Dungannon, were part of an unlawful assembly and committed a breach of the Party Processions Act. I want to ask you, whether, from first to last in this matter, did you act in good faith and according to the best of your skill, judgment, and knowledge, with a view to bring home punishment to whomsoever the offenders were?—Yes, decidedly.

3816. Do you believe, as far as you observed the conduct and contrasted the acts of the other magistrates connected with you, that they all did the same?—I am perfectly satisfied that they all acted conscientiously to do what they thought right.

3817. Did Mr. Moloney co-operate with the rest of the magistrates?—Yes.

3818. And agreed with you in all that was done?—Yes.

3819. Now, with respect to the 12th July, 1869, were you in Dungannon at that time?—Yes.

3820. Just state what arrangements were made or what application was made to the executive with respect to the coming anniversary—the substance of it—was there a force applied for?—Oh, a formidable force.

3821. I call attention to this because it is the eve of the things referred to?—Before I became a magistrate, and since, we always met for the purpose of seeing what force was necessary, and the magistrates were of opinion that the force should be so large that they could act without the risk of life by the overwhelming power of the force we had, and that that was the best way of preserving the peace of the town. We always applied for such a force ever since I came to the commission of the peace and before it.

3822. Were two resident magistrates sent on that occasion?—Yes, the 12th of July, 1869. In '68, '69, '70, and '71 too.

3823. I am only at July, 1869, now?—There was an Orange procession in the town that day.

3824. Do you know anything of it?—There was an Orange gathering as I am informed. I can only state that.

3825. Did you see anything of it that day?—I saw a party of Orangemen, not a large party, coming down at the lower part of the town, opposite the railway bridge, and on going on in the direction where I understood there was a large gathering of Orangemen, some-

where out in the county where, I believe, Mr. Johnston of Ballykilbeg was.

3826. Is that in the Killyman direction?—Yes.

3827. Tell me what route they took, and all that happened that you saw?—They were passing down the town; they had colours; they had drums, and were marching in procession, I think so; and the party went in that direction, and there were some people—but as this is only on information, I suppose you object to it.

Mr. *M'Laughlin*.—I do.

3828. Sergeant *Armstrong* (to witness).—Well, in consequence of some information you got, what did you do?—Well, I went down. I don't know how long it was after—but some informations were received that they were attacked by an opposing party.

3829. Did you go down to preserve the peace?—I did.

3830. And as a magistrate?—I did.

3831. Tell me what you saw when you went down?—When I went down I saw the police actually engaged in endeavouring to separate the two opposing parties down at the railway bridge, or in the direction of the Fowl Market. They succeeded by the most strenuous exertions, and the parties were separated, and the Orange party were passing on down opposite the railway station. The other party ran up the street close by, and wanted to get down by Barrack-street opposite Moon's Hotel. This was a way they could get down nearly as quickly as the others, and be in rather a better military position, by being above them. I saw the police running after them, and I ran too, but did not succeed in overtaking the police, who ran vigorously to do their duty and try and prevent a collision. I went back for the purpose of sending for the resident magistrate to send for additional police force, for I apprehended a serious row. When I went down Barrack-street afterwards the row was over, and one party was returning back up Barrack-street. And that was the time that Mr. Hayden called my attention to a man who was shouting and making a noise, and he said, "It is men like that who create a dangerous row, and I think it is your duty to arrest him."

3832. What party did he belong to?—He belonged to the Roman Catholic party.

3833. But Mr. Hayden called your attention to him?—Mr. Hayden called my attention to him, and said he thought it my duty to arrest him. But I did not. My reason for not arresting him was that I feared the excitement of the morning would be raised again at the close of the day, and it might be attended with danger. I thought it better not to do it, and besides that, as the other party were not out, there was no further danger of a row—at least I expected so.

3834. Did you act according to the best of your honest judgment in not arresting that man?—Yes, right or wrong I did.

3835. What further occurred—give us the whole history of it as far as you witnessed it?—Well, in the evening—

3836. First—the result was that a collision was prevented by the action of the police that morning?—Yes.

3837. Did the police behave well in your opinion?—I was astonished—seeing the few police who were there—at the efficacious and powerful way in which they put a stop to that. I think I never saw men behave better. I frequently spoke of it.

3838. And a collision was prevented?—Yes.

3839. No arrests were made; and did the town become tolerably quiet?—Till the evening.

3840. State what occurred then?—In the evening, when the Orange party were coming back, there were two or three times I conceived there was very serious danger of a row; but there were two resident magistrates there, and although I attended and stood close to the police, ready to render any aid I might be asked to give the magistrates, I left the responsibility—or they had assumed the responsibility, and I left it with

them—the two resident magistrates both being on the spot.

3841. But you stood in the street with the police?—Yes.

3842. Your anxiety, in fact, was to keep Dungannon quiet?—Certainly.

3843. Was there any riot on that occasion, any stone-throwing?—I am sure there was stone-throwing.

3844. You saw that?—Well, I believe, there was. I cannot say whether I saw the stone-throwing or heard it.

3845. About what hour of the evening did it occur?—I cannot call to my recollection, but I should say about six o'clock, or thereabouts—five or six o'clock.

3846. Did you yourself know any of these people?—I knew this man and some of the people with him.

3847. Was that the man Mr. Hayden pointed out?—Yes; and two or three of the people with him. I don't know who they are now, but I knew then.

3848. Was anything done in consequence of that; any informations sworn?—No.

3849. There was no danger done to life or limb?—Not answered.

3850. There was no serious damage?—There was no serious damage. I am not sure, but I think—I don't know whether any person was sent for trial or not; I cannot tell you.

3851. Mr. *M'Laughlin*.—There was no one you would know at that time?—I won't say there was.

3852. Sergeant *Armstrong*.—Were you at the Killyman funeral?—No.

3853. You did not go out of town. You were not at Killyman that day?—No.

3854. Was Captain Ball present when the informations were taken in that case, or the depositions?—On the bench?

3855. Yes?—He was. I think there was a large bench.

3856. That was in April, 1870?—Yes.

3857. I believe it was Captain Ball was concerned in taking the informations?—No, I think not. I think it was myself; but I forgot it until it was called to my mind by some observations on the other side in evidence. I forgot it altogether that it was so.

3858. But, at all events, did you take down fairly and honestly, to the best of your skill and judgment, what the witnesses stated?—I will tell you what we did.

3859. Just so?—I think it was Head-Constable Stewart, I am not sure, but he and some other policemen, I think, were examined as to the going out of the town of one of these parties. He swore, as well as my recollection goes, that some of these people walked very close together, as if in procession; that after some time he left this party in charge of three other constables, M'Parland, Clarke, and Lynch. After hearing Stewart's evidence, and of these three other men having gone together, the magistrates were of opinion that Lynch's evidence first, and then allowing the other two to supplement it by anything they had to say, and in that way taking a joint information—an information from Lynch as long as they stayed together—and then separate informations from the others if they could add anything, was the best way of doing it, and that was the reason why it was stated to M'Parland and to the other constable to listen, and if they differed on any point with Lynch they could correct him.

3860. Sergeant *Armstrong*.—I find the charge in the book to be "that these defendants, with several others, on the 18th instant, did unlawfully assemble on the public road leading from Dungannon to Laghy's Corner, having with them five drums and fife, in such a manner as to endanger the peace and tranquillity of the neighbourhood, and lead to a breach of the peace." We know these depositions were sent up to the law adviser after the court was over?—Well, I understand Captain Ball was requested—

Mr. *M'Laughlin*.—Better have some approach to regularity.

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3861. Sergeant *Armstrong* (to witness).—Just go on?—The final end of it was that Captain Ball was requested, I believe, to send up informations. At any rate he was to send up the depositions to the law advisers of the Crown for their opinion.

3862. And accordingly they went?—Accordingly they went.

3863. We take it that the day on which they were taken was about the 25th of April?—I think so. I think you are right.

3864. I want to know when did you first hear of the opinion of the law adviser?—I believe on the 6th of June. We did not first hear of the law adviser's opinion.

3865. I mean when did you first get it so as to know what was in it?—We only knew what was in it on the 6th of June.

3866. You knew the opinion had been given, but you did not know the contents of it until the 6th of June?—Yes.

3867. Was it then that Captain Ball produced it to the magistrates for the first time?—Yes, that's my recollection.

3868. I find the entry in the book is "Adjourned for the opinion of the Law Adviser." And then, under that is written, subsequently, of course—"No informations, in accordance with the opinion of the Law Adviser, dated April 27th, 1870; June 6th, 1870." It appears that the opinion was given on the 27th April, and the entry to the effect that no informations had been taken, pursuant to it, was made on the 6th of June?—Yes.

3869. That was the first day it was openly promulgated?—The first day I knew anything of the purport of it was that day.

3870. Was it read?—Yes.

3871. Do you recollect who read it?—I don't know. I think Mr. Nicholson was the chairman that day. I cannot call to my mind whether he read it or not.

Mr. Commissioner EXHAM.—Captain Ball said he thought it was Mr. Hamilton.

Mr. *Barry*.—That is with reference to another.

3872. Sergeant *Armstrong* (to witness).—I want to know about this matter of February in the present year—a drumming party in Perry-street in this town. Do you know anything about that?—What is it about?

3873. One of their particulars—a drumming party in Perry-street, Dungannon. I heard nothing of it up to the present time?—I don't know what it is at all. I don't know what you refer to.

3874. I don't know either, except that it is in their particulars. Were there any informations taken in June last that went on to the assizes, and in which the Crown did not prosecute?—Oh, yes.

3875. What was it about?—I think it was some summonses arising out of a party procession about the opening of the Orange hall. I don't know the dates.

3876. That I find I can refer to?—Very well. I remember the police bringing forward summonses against several parties for a breach of the Party Processions Act on that occasion. Informations were taken, and they were sent forward for trial.

3877. And we know the result—there was no prosecution?—I think it right to state also, that Mr. Smith brought forward an application for summonses on that day.

3878. Have you any letter that you addressed to Mr. Moloney?—I have a copy of it.

Mr. *McLaughlin*.—I object to that.

Witness.—I only knew about it this morning. That's a copy of it—a pressed copy. I have another in my own handwriting.

Cross-examined by Mr. *Barry*.

3879. I wish first to ask you a question or two about that opinion that you say you read for the first time on the 6th June. The depositions were taken about the 27th April, 1870?—Yes.

3880. And you say the opinion was read for the first time on the 6th June?—Yes.

3881. Was it communicated by Captain Ball of his own accord?—Yes.

3882. You said you heard something of the opinion before it was read?—Not of the contents of it.

3883. But that such an opinion had been given?—I heard so.

3884. Are you aware that it was in Captain Ball's possession for any time before he communicated it?—Oh, no, certainly not.

3885. And he then communicated it of his own accord to the bench?—Yes.

3886. You stated in your direct examination that when Captain Ball was appointed as Resident Magistrate here, you were very glad of it, because you considered it was specially the duty of the Resident Magistrate to deal with such things as drumming parties?—Well, if I said so I did not quite convey what I meant. What I meant was, that I had several other matters of business to attend to. Captain Ball's special duty is to attend to this one thing, which is what he is paid for by the Government; and I conceived for instance, that if I went down in the evening to my dinner in my own house, as long as Captain Ball was in the town my mind could rest, because it would not be my duty to go and look after anything.

3887. You did not mean to convey that Captain Ball had any special duty to discharge as Resident Magistrate, that was not the duty of any ordinary magistrate of the district?—No, certainly not, except that it was his special duty to devote his entire time to it when it was absolutely necessary. I may be wrong.

Mr. Commissioner COFFEY.—You are quite right.

Mr. Commissioner EXHAM.—I assume that Captain Ball would be always on the spot available.

3888. Mr. *Barry*.—As you don't mean to convey that he had any duty beyond that of any ordinary magistrate of the district, I need not say more on the subject probably; but do you think that, considering the fact that Captain Ball was here as a Roman Catholic gentleman and regarded somewhat jealously in that position by the Orangemen of the district, any very specially marked activity on his part as distinguished from the other magistrates would have been rather prejudicial to him in the exercise of his duty?—Well, I cannot answer that. I am not sure about it; but I don't think it should act upon his mind.

3889. Surely anything ought to act upon his mind that would, in his opinion, be calculated to injure his efficiency in the discharge of his duty?—Well, I am sure that if, for instance, there was any doubt about a case, and that he, perhaps acted conscientiously to the best of his power, and that the other party thought the decision was wrong, I am sure they would attribute it to his being a Roman Catholic, that is just the short way of it. I am sure they would think so.

3890. Captain Ball stated that up to the period he was examined before the police inquiry here, he had always cordially acted with you in relation to the drumming parties, and in the general discharge of his duties as a magistrate?—Cordially, and properly, and efficiently, in my opinion.

3891. I believe Captain Ball was in considerable communication with yourself personally as the magistrate most constantly on the spot?—Yes.

3892. Had he been in more frequent communication with you than with any of the other magistrates?—I should think so.

3893. And when communications reached Captain Ball from the Castle or other quarters, he has frequently gone to your office, and at once communicated the contents?—Certainly, and we have at once discussed them.

3894. And in every way he has shown confidence in you?—I think so. I thought so up to that day.

3895. Well now, Captain Ball came here first, I think, on the 3rd September, 1869?—Yes.

3896. He did not of course come to reside here till the latter end of October?—I can't tell you dates.

3897. I think it was about the month of February, 1870, that Captain Ball first applied to the Castle for an opinion of the law adviser on these drumming parties?—That I don't know. I don't remember the exact date. I know it was his intention to do so—to try and get that question—that craze of ours, if we may call it so, settled some way or other.

3898. Was that the first occasion on which any opinion of a general character with regard to these drumming parties was obtained for the guidance of the magistrates?—Yes.

3899. And that was done by Captain Ball, I believe, of his own accord?—Yes.

3900. Because he thought it desirable to have the law distinctly defined?—I recollect the case now. I recollect that in discussing these questions he mentioned to me about some things at Newry, and he described his view of it. Well—I discussed it with him, and he said he thought he would write up to the Castle and get an opinion, or something of that sort.

3901. He showed from the earliest period after his coming here a decided anxiety to have these drumming parties put down if possible?—Oh yes, clearly.

3902. And you, in that view cordially co-operated?—Clearly.

Cross-examined by Mr. *M'Laughlin*.

3903. As at present advised, they never having given you a clear opinion, you are not in a position, as a magistrate, to put down the drumming parties?—That's my opinion—I may be wrong. That is, drumming parties possessing no element of illegality, except that they are drumming parties which we believe if they proceeded into the town, would produce a riot.

3904. By that, of course, you refer to drumming parties proper—that is to say, what we ordinarily call drumming parties, such as have been deposed to during the course of the evidence?—Drumming parties, contradistinguished from 12th of July parties, and those procession days.

3905. And you are of opinion now that a drumming party on the 12th of July would be wrong?—I am not giving any opinion about the morality of the case at all.

3906. Nor I. Legality is what I am at; and you are a lawyer of greater experience than I am?—Very far inferior to you.

3907. Now, you are only humbugging me?—I am not doing any such thing. I was only an attorney and you are a learned counsel.

3908. You are a much more learned attorney than I am a learned counsel?—I won't say that.

3909. Besides you are a year or two older than I am?—I am only a little—

3910. Now, sir, you think that, until the law is changed the magistrates are—to use your own word—paralyzed?—I do—paralyzed as regards these drumming parties.

3911. I understand that the drumming parties we are speaking of are the ordinary drumming parties?—And where the only danger is the conception of what might occur, in a subsequent state of affairs, in the conduct of that party.

3912. What does that mean in English?

Mr. Commissioner COFFEY.—I understand him thoroughly. He explained himself before.

Mr. *M'Laughlin*.—That is the reason you understand it now.

Mr. Commissioner COFFEY.—Yes, because I asked him, I was in some doubt myself, because his language was a little ambiguous, but I think he explained it perfectly. Mr. Newton, allow me to interpose for a moment. I want to get a clear conception in my mind as to your meaning. As far as I understand you, you mean this—that if a drumming party be proceeding along a public road, not in the vicinity of a town at all, and they having no intention to fight with anybody, or to come into collision with anybody, in that

stage or state of affairs you don't consider it illegal at all?—No.

Sergeant *Armstrong*.—And not playing party tunes or displaying party colours.

Mr. *M'Laughlin*.—Is there anything more irregular than that I want the learned Commissioners to say.

Mr. Commissioner COFFEY.—Well, upon my word if we were to balance irregularities,

Mr. *M'Laughlin*.—I know it would be against me.

Mr. Commissioner COFFEY.—I don't know that at all. I have not said that.

Mr. *M'Laughlin*.—I deliberately say that anything more irregular than that on the part of the Sergeant, when, feeling that the witness covered too much ground, he tries to cut him down to his own limit, I never saw.

Mr. Commissioner COFFEY.—It is quite the Sergeant's right to take care that this gentleman is not misunderstood.

Mr. *M'Laughlin*.—Is the Sergeant to give part of the evidence?

Mr. Commissioner COFFEY.—I will not answer that question, you will afterwards have a right to re-examine and get all this explained.

Mr. *M'Laughlin*.—That would be the regular way. This is the irregular way.

Sergeant *Armstrong*.—The witness does not apply himself to the Party Processions Act at all, where there must be banners and music, and playing of party tunes.

Witness.—Oh, no, he knows that.

Mr. Commissioner COFFEY.—What I am talking about are the ordinary drumming parties unaccompanied with flags or banners.

Witness.—Or party tunes.

Mr. Commissioner COFFEY.—What we are speaking of are the drumming parties that, we understand, sometimes come into the town, sometimes are in the vicinity of the town, and sometimes are out in the public highways.

Witness.—That is just the very thing.

3913. Mr. *M'Laughlin*.—Does not that amount to my definition of a drumming party? Mr. Newton, you are not afraid, I suppose?—Not a bit.

3914. You are not afraid of any traps being set for you by a person like me?—I am very sure you would not condescend to do so.

3915. I will not set any traps. I would not catch you?—I won't say that. I will not give that testimony in your favour.

3916. You were pleased to refer the Sergeant, I think also, to your experience as a lawyer. I suppose you would not think yourself a better lawyer than the late Lord Chancellor Brewster?—No, I am no lawyer at all.

3917. You are not to be compared with him?—I am only a country attorney; I was, at least.

3918. Humility, you know. You are the largest-sized attorney in the north of Ireland. You know Chief Justice Monahan of the Common Pleas?—Yes. I don't know him personally.

3919. I suppose the present law adviser, Mr. Johnston, who is a member of the bar, is supposed to know a little law?—I did not know who he was at all.

3920. You will see it in "Thom's Directory." How long is it since you were appointed a magistrate?—Since June, 1868.

3921. Before that you had very extensive experience as an attorney?—Yes.

3922. Now I will say this—and I am sure you will pardon me if there be any offensiveness in the compliment—that you are one of the ablest and most experienced attorneys in Ireland?—I won't say that.

3923. I think you said to the Sergeant in the course of his examination that these displays are regarded as offensive by the Catholics?—Yes.

3924. You think that those men who have sworn here are in earnest?—Yes, certainly.

3925. And if you saw any way of putting them down you would put them down with a heart and a

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half?—Mr. M'Laughlin, let me interrupt you. An observation was made in the evidence given by Mr. Hayden that I want to clear myself of. He said, as well as I recollect now, that I said they were only offensive to the low fighting class of Roman Catholics. It was also stated by mistake by Mr. M'Laughlin that it was reported so in the *Northern Star*. First, he is under a misapprehension about that. It is not so reported. The words are in it, but applied in a different place. I tell you my explanation. It was very difficult for a witness to answer questions at that inquiry at all, for Mr. M'Mordie was advising, and I had to go on in a sort of roundabout way over questions that were very difficult to answer at all; but I answered candidly the questions as asked by Mr. M'Mordie without waiting to have them put through anybody. The question asked of me, I believe, or at any rate what I intended to reply to was—were these drumming parties calculated to create animosity between different religious parties, and lead to breaches of the peace. My impression is what I intended, at any rate to convey, was that they would with the low fighting class, the mob; that's all I intended to convey; and I added something to the effect that religion or religious feeling had nothing to do with that point at all; that's all I meant to convey. I never meant to convey that they were not offensive, for I know that they are offensive; for several respectable Roman Catholics have talked to me twenty times over about it. I know that it is offensive to them. I beg pardon for the interruption, but I thought it was due to myself.

3926. Now I suppose the reason why you would put them down is because they are dangerous to the public peace?—I would wish them put down for two reasons. One is because they are offensive to a large body of the people around me; and, secondly, I believe that in a social point of view they are most injurious, because they raise a barrier against the union of the party of law and order against a communistic democracy.

3927. Well done?—Now that is what I say.

3928. You must feel exhausted after that?—No; but you asked me the question or I should not have said so; I should answer it.

Mr. Commissioner COFFEY.—And a very sensible answer it is in my humble judgment.

Mr. M'Laughlin.—I have heard nothing more eloquent.

3929. Mr. Commissioner COFFEY.—It prevents the union of well disposed people?—Yes.

Sergeant *Armstrong*.—And of all sects and classes.

Mr. Commissioner EXHAM.—It prevents all from joining for the good of their country.

3930. Mr. M'Laughlin.—Now, what I was about to ask you was this—danger, regarded from a judicial, magisterial, and legal point of view, arises from the prevalence of this feeling among the Roman Catholic party, rightly or wrongly?—I beg your pardon.

3931. I say that danger to the public peace, arising from these drumming parties, springs out of the feeling, rightly or wrongly entertained, with which the Catholics regard them?—Yes.

3932. May I trouble you to listen to the opinion of the Lord Chief Justice:—

"It is perfectly right and proper for a number of men to associate and to walk together in celebration of an event of that description, so long as others don't take offence at it; but when once, from the nature of the case, it becomes offensive to others, and the parties taking part in such celebrations know that they are offensive, and will produce ill-feeling, and probably tend to a breach of the peace, I think such assemblies, no matter how innocent originally, are illegal and unjustifiable."

Now assuming that you understand the exceedingly plain English of my Lord Chief Justice, do you still persist in saying that you magistrates have no power to put down these drumming parties?—Well, that's my opinion. I don't think that that's exactly the

case that I refer to, and in respect of which I think we want help from the law, and which I referred to in my letter of June, 1870, to Captain Ball. I say that in certain localities these drumming parties are really no offence whatever, for the parties who drum are very strongly in the majority there, and I don't think they care much about it; but it is where the parties begin to become evenly balanced, or where you go to certain localities in which rows had previously taken place, that they become dangerous. I think the law might very easily settle that.

3933. Then, in point of fact, that, turned into plain English, means this, that where the Catholics are only few they might drum away, but that where the parties are numerically equal it would be wrong?—Well, I am only speaking—

3934. Is that your evidence?—My evidence is—

3935. Is not that a short abstract of your evidence?—It is not.

3936. Well done! Now tell me where am I wrong?—I will. Where the Roman Catholics are very few the peace of the country is not endangered. That is all I mean to convey.

3937. Because they are not strong enough to oppose them?—To oppose—precisely. The peace is not then endangered at all.

3938. Mr. Commissioner COFFEY.—It is no matter whether or not you irritate the feelings of half a dozen people, but it is of great consequence if you irritate a thousand people?—I beg your pardon, I don't say that. I don't say that it is no matter about their feelings. It is matter; if there were only two or three Roman Catholics in a place I think it would be morally wrong to do anything that would insult them.

Mr. Commissioner COFFEY.—Yes.

Mr. Commissioner EXHAM.—I understand Mr. Newton to say that it is offensive to every Roman Catholic.

Mr. Commissioner COFFEY.—It is offensive to all, but dangerous only where the parties are more evenly balanced.

Sergeant *Armstrong*.—And he wishes for a general law to suppress it under all circumstances.

Mr. M'Laughlin.—Is that regular on the part of the Sergeant?

Mr. Commissioner COFFEY.—It is not.

3939. Mr. M'Laughlin.—Well, I am glad I have at last got a decision to that effect. Now, Mr. Newton. I just want to ask your opinion as to this—supposing that the Catholics took it into their heads to go out with drumming parties in this absurd and unchristian way that the others do, would you think it a right thing for them to do?—Do you mean morally or legally?

3940. I mean on their feet and on the road?—Certainly, they would legally commit no crime in my opinion.

3941. In your opinion? Very well. Therefore all that has been already preached at you, or into you—as I may more properly phrase it—with reference to the law adviser's opinion, and the judicial opinion of the Lord Chief Justice, and all that, leaves you in that condition of mind still?—Yes. It may be a craze. I said so at first, and I again use that expression.

3942. I never used it?—No, but a very intelligent man did.

3943. Then it being as much the right of the Catholics as of the Protestants to carry on in this way, how do you satisfy yourself as to the legality and justice of ignoring the Catholics where they are only few in a district—how do you satisfy yourself as to that?—I don't.

Sergeant *Armstrong*.—The question is very objectionable.

Witness.—I don't know about that.

3944. Mr. M'Laughlin.—I want to know?—I don't ignore them at all. I should be very sorry to do so.

3945. Don't you think that any display that is offensive to any class of the community is calculated to

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produce danger to the public peace—do you or do you not?—Well I think, for instance, that there may be political demonstrations perfectly legitimate that I would be sorry to stop—political expressions of feeling.

3946. Do you call drumming parties political demonstrations?—I do not.

3947. Do you conceive that drumming parties, no matter from what side proceeding, and carried on under circumstances identical with or analogous to those that are at present conducted, are dangerous to the public peace?—I believe they are, and I believe that we have no power to prevent them.

3948. That is, dangerous to the public peace, but too many for the public peace as the law now stands?—No, I think the law does not meet the case.

3949. Listen to this opinion of an eminent English judge:—

“It may be safely stated that an assembly of great numbers of persons, which, from its general appearance and accompanying circumstances, is calculated to excite terror, alarm, and consternation, is generally criminal and unlawful.”

Do you agree with that English judge's exposition of the law—maybe you might be able to do so?—Well, I don't know, and I tell you why I say it. At the first blush it would appear to me to be against my view of the law.

3950. That's right; you know the foundation of the law is never to take anything for granted, but to see the foundations of your opinion. In point of fact, exercising your legal judgment honestly and conscientiously, you cannot arrive at the same conclusion that this English judge did?—Oh no, I say that, upon the case that you referred to there, the way at first strikes my mind is, that it is contrary to the opinion I have formed on the subject; that is all.

3951. Very well. That is fair; nothing can be fairer. May I draw your attention again—for I won't leave you in a position to complain of unfairness in my examination as far as regards the strictly legal part of it—to the way in which another eminent judge states the law. I am about to read from what has been unceremoniously called “Brewster's Letter,” I mean the late Lord Chancellor Brewster. He says:—

“I take it to be the law of the land that any party assembled under such circumstances as, according to the opinion of rational and firm men, are likely to produce danger to the tranquillity and peace of the neighbourhood, is an unlawful assembly.”

Do you or do you not concur in that exposition of the law?—Yes.

3952. You do. Will you distinguish in what respect that exposition of the law varies from the exposition which I immediately before gave you, viz.:—

“It may be safely stated that an assembly of great numbers of persons, which, from its general appearance and accompanying circumstances, is calculated to excite terror, alarm, and consternation, is generally criminal and unlawful.”

Tell me, if you please, how is it that you gloss over the last exposition of the law?—Read me the last.

Certainly.

Mr. Commissioner COFFEY.—Better put it into his hand.

Mr. *McLaughlin*.—No doubt, with a lay witness this should not be done, but this is a gentleman who has undertaken to correct the judges.

Witness.—I don't.

Mr. Commissioner EXHAM.—I did not understand him to undertake anything of the sort.

Mr. *McLaughlin*.—The moment this gentleman allows his judgment to operate, it is correcting the judges. Mr. Newton has sworn—and it is the foundation of my cross-examination—that he does not at present regard himself as possessed of sufficient legal power to repress these demonstrations. Can anything be more legitimate than my drawing his attention to what is his legal power?

3953. (To witness).—Take that in your hand and read it carefully?—I will read a little paragraph that I have come to:—

“Whether any particular meeting be a lawful or unlawful description must depend on the circumstances under which it is held, the manner in which it is celebrated, together with the conduct and demeanor of those who attend it.”

That's my answer.

3954. That's your answer, you say?—Yes.

3955. Are the circumstances under which drumming parties are brought together, and the conduct and demeanor of those who attend them, calculated in your opinion to provoke a breach of the peace?—Not on those roads where they do nothing but make a terrible noise with drums.

3956. Do you include among these roads Perry-street?—Well, the difficulty I have about that—

3957. Do you or do you not?—Well, I'll tell you—

3958. If you please, answer directly, and not in that metaphysical way. Do you or do you not regard Perry-street as one of the harmless roads—yes or no?—I never heard—

3959. Yes or no, if you please; do you or do you not?—Well, I am doubtful on that point now. I will explain.

3960. Sergeant *Armstrong*.—Do.

3961. *Witness*.—I never knew of any row having taken place by reason of these people—which has been unfortunately the case for many years past—going through Perry-street. I never knew of it having produced a breach of the peace. I do believe there is a great distinction between parties drumming on the country roads and parties coming into the town—and even in Perry-street I think there is a great distinction. Whether the particular circumstances of a drumming party going into Perry-street make it illegal or not, depends upon some additional—some extra fact, besides those that took place in the country; and I think that was corroborated by a witness of yours, not a lawyer, who gave reasonable testimony, that is Mr. Gettings.

Mr. Commissioner EXHAM.—Certainly one of the judges professes to have no doubt as to what the law is; and another appears to think that it is not possible for a judge to lay down all the elements that may constitute an unlawful assembly.

Mr. Commissioner COFFEY.—But if it be sworn that these things are regarded as a challenge to go out and fight—if you have information of that sort, can any reasonable being for a moment hesitate to come to a conclusion upon it?

Mr. *McLaughlin*.—I leave that part of it for the re-examination.

3962. [To witness].—You have been good enough to refer, at the close of your somewhat elaborate answer, to an opinion given by somebody else in a prior part of the examination. Were you present in court when some one swore that the Catholic and the Protestant population—it is a melancholy thing to be delayed to make the distinction—in Perry-street were about half and half?—Well, I think they are nearly so.

3963. In the face of that fact, Mr. Newton—and I am anxious for a fair reply—do you persist in your last answer with respect to Perry-street?—What I said was this. You asked me whether if a drumming party, having the same features exactly as on a public road, and which, when there, I thought was not illegal, or at least that we could not deal with them—came into Perry-street, it would be illegal there. I do not speak of offence or wrong, or anything like that; but I merely say that there must be some additional fact brought forward with regard to that place, in my opinion. That's all I say; and that the offence must be in the intention to make it criminal.

3964.—That is to say, no matter how much exasperated the Catholics may be, and no matter how imminently dangerous, in consequence, the affairs may

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become to the public peace, if the parties charged reply that there is no offence in their intention, there is no criminal mind in the parties charged?—I did not speak of criminal mind at all.

3965. "The offence must be in the criminal," you said. I took your words down.—That means that no man can be convicted for what is passing in another man's mind—that is all I meant to convey by that.

3966. That's right. Very well; that's the proposition I meant to lay down.

3967. Therefore, if the man drumming is not in any way offended at his own drumming, it does not matter a straw what is passing in the minds of any number of third parties?—I never said that it "did not matter a straw." I only say this—

3968. You mean legally?—No; because—

3969. When I withdraw the phrase "matter a straw," you mean that a strong feeling existing in the minds of other people, which, if it broke out, would endanger the public peace, does not enable you to act—that it is not enough. I think it is not enough by itself. That is my opinion. I may be wrong altogether.

3970. Mr. Commissioner COFFEY.—Do you deliberately adhere to this, because I don't know whether you see what the consequences are? Do you mean to say that in the case of parties not intending of themselves to come into conflict with others, but aware that their acts and conduct will produce exasperation that will provoke and cause a breach of the peace, no matter what their own intentions are, and utterly regardless of them, there is no legal offence? If you take up a stick and hold it over a man's head, even though you never mean to strike him, and he is afraid that you are going to do so, and knock you down to prevent injury to himself, do you mean to say that you have committed no offence?—Most assuredly I never meant to convey that, because it is a criminal thing in law to hold a stick over a man's head. It is an assault.

3971. Surely it is a first principle of law, and of common sense—putting law out of the question—that a man is to be judged by the consequences of his acts, and that you are to infer his motives from those acts?—Certainly.

3972. And then, if you go into a mixed population and exasperate people by challenging them with drums to come out and fight, don't you think now that the criminal consequences follow, no matter what your state of mind is?—First of all, we have to see that it is a challenge. I never heard it suggested that any questions would be put as to whether it was a challenge or not. I say that it is aggravating; I say that it is offensive; and I say that it should be put down.

3973. Did you hear a public officer, the County Inspector, did you hear a number of people, one after another, get into that box, and swear on their oaths that they considered it a challenge on the part of these drumming parties, to the Catholics?—I did.

3974. Do you believe that they swore the truth?—I conscientiously believe it to be the truth, and I don't differ from them; but that is not the point I was aiming at.

3975. Mr. Commissioner EXHAM.—Mr. Newton, is it not the natural consequence of these drumming parties being offensive that they are likely to lead to a breach of the peace; in the same way as if a man writes a letter, or speaks words, and an action for libel is brought against him for that, it is not what the man meant, but what he wrote?—Certainly not.

3976. Or by the words that he used in his own mind, but the impression that third persons who heard the words or read the document received from them that constitutes the criterion of the matter. Well, in the same way, is it not the natural consequence of these drumming parties being offensive to particular individuals, that from the very nature of the human constitution they should lead to a breach of the peace on the part of the persons who are offended by them?—Yes.

3977. Very well; if it is a natural consequence?—

Will you allow me just to give you a case, which, if the law adviser of the Crown will give his opinion to that effect, will end it. Suppose a drumming party is, we will say, two miles from town—

3978. Mr. Commissioner COFFEY.—You were asked about Perry-street.

Witness.—But the learned Commissioner EXHAM puts a case to me. These drumming parties, even in the country, two miles from Dungannon, are offensive to the Roman Catholics in the neighbourhood; and if it was a place where there would be a body of the lower class of Roman Catholics, and that they would insist on proceeding through that particular locality, even in the country, I believe that in that particular case it would be an illegal procession. But if we suppose Northland-row, in Dungannon, to be altogether inhabited by Roman Catholic gentlemen, and that a drumming party proceeds along there, I don't believe that it would lead to a breach of the peace, although it would be disgusting and offensive to them. That's my opinion—I may be wrong.

3979. Mr. *McLaughlin*.—And I suppose you will concur with me when I say that the whole population of Dungannon does not reside in Northland-row?—No.

3980. It is also a principle of acoustics that if you beat a drum in a street it will be heard in any other street within earshot?—Yes.

3981. I just want to bring you back to another matter, it being your opinion that the condition of mind of third parties, in a case where opposition takes place, makes no difference, you would not allow any question to be put as to whether these things were calculated to provoke a breach of the peace?—Most surely I would allow the question to be put; and I think it ought always to be put in these cases where there are prosecutions for illegal assembly.

3982. You have always done so?—Well, I don't know.

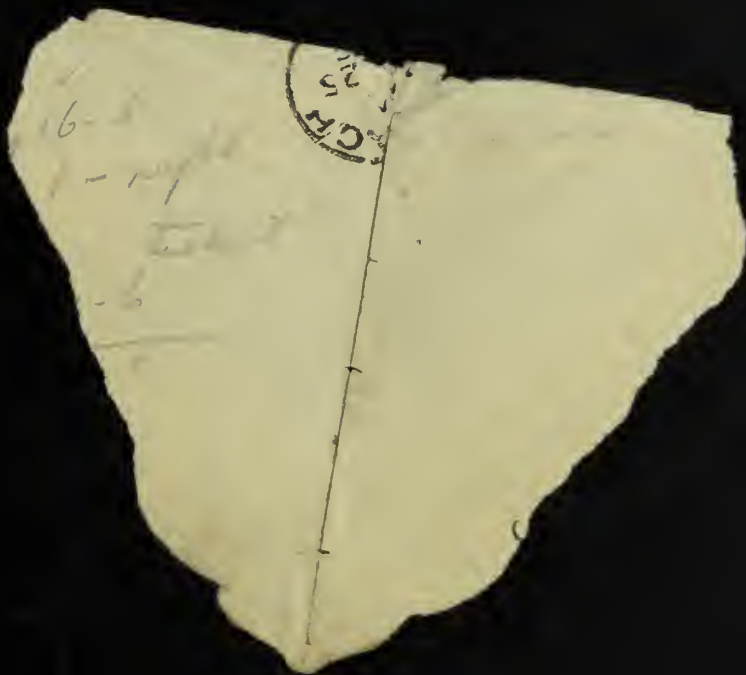
3983. Listen to this:—"Dungannon Petty Sessions. Charge of unlawful assembly. The usual petty sessions of Dungannon opened to-day in the courthouse. The following were the magistrates:—Mr. Lyle, chairman; Mr. Molony, Mr. Courtney Newton—that's yourself.

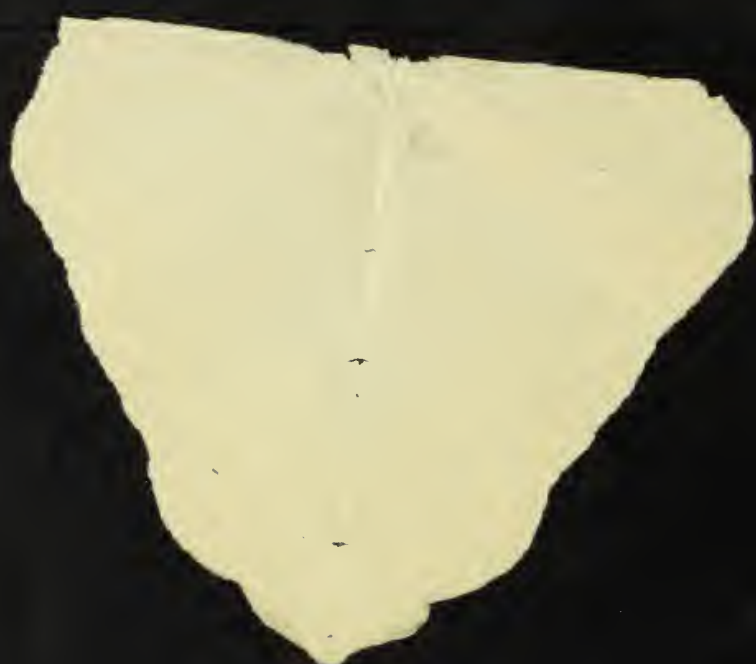
Mr. Commissioner COFFEY.—What is the date of this?

Mr. *McLaughlin*.—May the 18th, 1869. This is the case of the missing information. "Messrs. Frizell and Hodgett were charged with having committed a breach of the Party Processions Act, in Dungannon, on the 23rd of April." I now read from the middle of the report. Mr. Moore, Crown solicitor, is the prosecuting attorney. Mr. Cochrane is attorney for the persons in the dock. Mr. Moore puts this question to the witness—"Is it your opinion that the playing of drums at any time in Dungannon is calculated to lead to a breach of the peace?" Mr. Cochrane objects, saying, that can be got from some other witness. Mr. Moore has no right to put the question then. Mr. Moore says it is the province of the Court to put this question. Mr. Cochrane—A question of that kind can be put for the prisoner, but not for the Crown. The Bench, having considered the objection, said that if Mr. Moore thought it necessary he could have the witness recalled at a future stage of the proceedings. Then Captain Blake is examined, and Mr. Moore puts this question—"Is the playing of music at any time calculated to create a breach of the peace in Dungannon?" Mr. Cochrane objected, saying the witness might be asked if it was calculated to create animosity, but not if it was calculated to create a breach of the peace. A long discussion ensued, at the termination of which the Bench ruled that the question should not be put. How do you explain that?—I explain it by saying that I did not agree with it.

3984. You did not agree with it.—No.

3985. At all events that accurately represents, in a compendious way, what occurred, the gentleman not





being able to give the whole newspaper to an affair of the sort?—I remember the question being proposed.

3986. And that is substantially a fair report of what occurred?—Well, there are some et ceteras; but in the part that you speak of it is. I recollect Mr. Moore submitting that he was entitled to put the question whether or not these things were calculated to create a breach of the peace; and the decision of the Bench was that the question should not be put. That's all I say. But I say further, that that was not my opinion.

Mr. Commissioner COFFEY.—It is very curious that I observe here, among the magistrates present, the resident magistrate, G. H. Molony, R.M.

3987. (To witness.) Do you recollect whether Mr. Molony concurred in the opinion that that question ought to be put?—I have not the slightest recollection as to any one magistrate more than another; only I recollect perfectly well at the moment dissenting from that proposition; although I conceive that those informations contained ample without that, for they contained the breaking of Houston's windows.

Mr. Commissioner EXHAM.—The magistrates must have considered it material on the summons. The question as to whether the alleged acts are calculated to promote animosity and a breach of the peace does not point to an ingredient in an offence under the Party Processions Act, but it does in the case of a charge of an unlawful assembly; therefore it would be well to know the exact nature of the summons.

Mr. *McLaughlin*.—It was for both.

Witness.—I think it was.

Mr. Commissioner COFFEY.—It was for both a breach of the Party Processions Act, and an unlawful assembly.

Mr. Commissioner EXHAM.—The law adviser's opinion was that the summons should be dismissed and the parties re-summoned.

Mr. *McLaughlin*.—That is, that the reference to the Party Processions Act should be omitted from it. In point of fact the summons was bad for duplicity, according to my humble judgment, the charge having been made both at common law and under the statute.

Sergeant *Armstrong*.—It is not very plain whether or not the charge was intended to be cumulative. "That the defendants with others, in the town of Dungannon, did unlawfully assemble and commit a breach of the Party Processions Act, on the 23rd of April, 1869."

3988. Mr. *McLaughlin* (to witness).—Mr. Newton, you are a man of experience; do you think it a very irrational thing that the Catholics should find fault —?—With the drumming parties?

3989. Yes?—No.

3990. It is natural enough that they should?—Yes. If I were in their place on the other side I would feel offended. For instance, if the Roman Catholic party made a habit of drumming, or did some of the things that we hear of in the South of Ireland, I think they would be offensive to me.

3991. I will come to that presently?—I would not set one thing against another. I am totally against that.

3992. That opinion does obtain though in the north?—It does.

3993. Have the persons that engage in these drumming parties average common sense, and do they understand plain English?—My belief is that the generality of these drumming parties consist of very small numbers, principally boys. I have seen very few of them, and therefore I am only giving you what my opinion is.

3994. You don't mean to say that men don't take part in them?—Indeed I do not; I did not say that.

3995. Were you present when a gentleman named Patrick Flanagan gave evidence, and was cross-examined by the Sergeant? Did you hear Mr. Flanagan saying that he thought there was something in your demeanor at the time you read out the law adviser's opinion that was calculated to inspire the drumming

parties with the idea that even if they were brought up they would have a chance? Did you hear him say that?—I don't remember.

Mr. *Flanagan*.—I beg pardon. I said the demeanor of the bench.

Mr. *McLaughlin*.—Well, "demeanor of the bench." (To witness).—Don't you think there is something in the demeanor of a man?—Yes.

3996. Would you not think it a most rational opinion on the part of any person of a drumming party now in court that they would be encouraged by reason of your views? As a rational man, give a direct answer. Would it not be the natural operation of what you said on the human mind as at present constituted?

Mr. Commissioner COFFEY.—As to drumming parties on the highways?

Witness.—Well, I will tell you what. I think I have given, as plainly as I possibly can, my opinion of the moral wrong of these drumming parties, at any rate, even taking the most innocent of them. I have given that opinion as strongly as I could; and I state further that if the law advisers of the Crown give a distinct opinion, I believe that I am bound as a magistrate to take it in the same way as I would be bound to take the definition of the law from the Judge if I were a jurymen; and I would act on it.

3997. What would satisfy you if the law adviser's opinion won't, and the opinion of the Judges won't?—They quote books that I could.

3998. Have you forgotten within the last two or three years that an opinion is worth nothing unless it is verified from law books?—The difficulty is that we are not lawyers. If he would drop out references to law books, and say that where there are drumming parties along roads, and the magistrate is either convinced in his own mind, or hears from evidence that they will produce a feeling on the part of other parties, which, when the parties meet, would lead to a breach of the peace, such conduct constitutes an illegal act which the magistrates should send for trial, I am perfectly satisfied to act on it.

Mr. Commissioner COFFEY.—I don't know whether my opinion will influence you or not, but given the circumstances you state, I venture to think that there is not a lawyer in the land, from the man only six months called to the bar, to the man who has attained thirty years maturity at his profession, who would not say "yes" to that.

Mr. Commissioner EXHAM.—I must indorse it also.

3999. Mr. *McLaughlin* (to witness).—Do you still persist in saying that this does not enable you to put down the drumming parties?—"In addition to the before-mentioned cases, every assembly of a large number of persons, whose general appearance and accompanying circumstances are calculated, in the opinion of reasonable men, to excite terror and alarm, and produce danger to the tranquillity and peace of the neighbourhood"—the law adviser goes according to the law book, word for word—"is an unlawful assembly, and all persons taking part in it are indictable for misdemeanor at common law; and in judging whether an assembly is of such a character or not, the magistrates must take into consideration the nature of the assembly"—this is the passage that you read yourself—"the way it is brought together, and the conduct and demeanor of the parties. All these are questions of fact for the magistrates to determine for themselves." Now, having heard the testimony of a host of witnesses in addition, from the County Inspector down to the last layman who was examined, have you any doubt that these displays are calculated to produce terror and alarm, and that their conduct and demeanor are dangerous to the peace? Have you any doubt about it?—No, none; but in a case of that sort, just to show you the difficulty we are placed in, in the case of the breaking of the chapel windows that occurred in 1869, so strong was I that it was perfectly clear that it was a breach of the law and indictable that I stated that I was prepared to take the

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informations and send them on, that I myself was prepared to do so, being of opinion that it was plainly disclosed that there was a breaking of the chapel windows by a party, or stragglers from it, and that the window of a man named Houston was broken while the party was passing opposite to his house. I conceived that there were such elements in the case, irrespective even of the element about the breach of the peace, that I was satisfied it should be sent for trial; and I was perfectly astonished when I heard that the law adviser of the Crown said it should not.

4000. Just so; and notwithstanding that your evidence is this, that you are in a position to punish the breaking of the chapel windows, but are not in a position to punish the drumming parties whose proceedings caused that?—Is that in evidence?

4001. No; but you say you were going to send that drumming party to trial for that, and yet you require the law to be in some other condition than it is in before you can put down the drumming parties as a magistrate?—I don't believe the law advisers of the Crown intend to put us astray, but I believe they want to get rid of the cases as fast as possible—to state a few truisms (and I could bring you a case to the point), and then to leave it to the magistrates to judge as much as they can for themselves. I don't think that is fair.

Mr. Commissioner COFFEY. — It is right to apprise you of this that it is the magistrates who hear a case that are to determine as to the circumstances of it. The law adviser can give no advice except in general terms, for he is not responsible. It is the magistrates' conscience and intelligence—for the law advisers cannot—that are to be applied to what is going on in Dungannon.

Witness.—Well, sir, my conscience enabled me, in the performance of my duty, to say that I would send that case for trial, and the law adviser's conscience told him as candidly that there was no case for trial. Will you tell me what, under the circumstances, was a magistrate to do?

Mr. M^cLaughlin.—There was a question that was not put.

Mr. Commissioner COFFEY.—That is a mistake. The papers satisfy my mind that the law adviser plainly had come to the conclusion that the offence charged against these persons was not a breach of the peace, nor for having provoked alarm, but that they were brought before the magistrates under the Party Processions Act, and that there was no element in the informations to show that there was a party procession, and therefore he said that there was no case; but in the very same document he says that those parties ought to be re-summoned.

Witness.—For a riot?

Mr. Commissioner COFFEY.—And creating a disturbance.

Witness.—And there was not a particle of a riot in the same place.

Mr. Commissioner COFFEY.—We don't confine ourselves to a riot and disturbance.

Witness.—That is what he says. It is the decision on that particular case that you had better read.

Mr. Commissioner COFFEY.—At all events the value of this inquiry is to sift it thoroughly, and exhaust it.

Witness.—I think it will be most useful in that way, for an amendment of the law is wanted, so as to give, as a rule, in distinct language.

Mr. Commissioner EXHAM.—I am satisfied that all along the view the law adviser took of this case was, that it was a summons under the Party Processions Act.

Mr. M^cLaughlin.—Is not that averring against the record?

Mr. Commissioner COFFEY.—Whether it avers against the record or not, it is plain that that was the law adviser's opinion. It may have arisen from misconception, hurried mistake, or confusion, but unquestionably what was before his mind was, that the parties had been made amenable for a breach of the

Party Processions Act, for his opinion is this:—Case dismissed. In the law adviser's opinion there was no breach of the Party Processions Act, as disclosed by the accompanying informations; therefore the present summons was rightly dismissed. Therefore he was under the impression that the document before him contained that and that alone; and then he gives this voluntary advice to the magistrates, which he might just as well have left alone:—"If the assembly in question threw stones at houses or churches, or acted with violence or turbulence, and created terror or alarm, the parties may be summoned for a riot, and if the evidence warrants it, informations may be taken for a riot, and the case sent for trial."

Witness.—Exactly. Violence or turbulence; and there was no such thing on that occasion.

Mr. Commissioner EXHAM.—Mr. Newton looked on it as a summons for an unlawful assembly, and he wanted to have the case sent forward. The law adviser thought it was a case under the Party Processions Act, and he thought the summons should be dismissed.

Witness.—And a new one taken out for riot, if there was turbulence or violence.

Mr. Commissioner COFFEY.—There was no element of riot.

Witness.—There was nothing in it to warrant that.

4002. Mr. M^cLaughlin (to witness). — You had clearly on your mind what were the contents of the summons?—Yes.

4003. And they fully warranted the putting of that question which the bench refused to allow to be put, you being in a minority of one?—Certainly.

4004. Did any of the bench agree with you?—I cannot answer as to that.

4005. Try?—I cannot answer. About that case I have not the slightest recollection of the discussion; I only recollect the Chairman asking our opinions round; and I know no more what any one magistrate said on that occasion than I do about what is passing outside the door at this moment. I would tell you if I could.

4006. You cannot tell in what proportions the bench were divided?—No.

4007. Are you able to say whether or not Mr. Moloney was in favour of your view?—I cannot.

4008. Now, having regard to your legal education and former attainments, I believe it is the rule of courtesy in those cases, that any man who has been a professional lawyer, is generally the presiding magistrate?—No, not here.

4009. I thought it was——?—No; our rule is, we take it in seniority. For instance, if Mr. Lyle is the presiding man to-day, the person who is next in seniority would take it, assuming that he attended, next day.

4010. Then, as I understand you, Mr. Lyle is the senior magistrate?—The senior gentleman here.

4011. I suppose you yourself would be the junior magistrate?—No; I think Mr. Richardson is the junior magistrate.

4012. But he is not often here?—Oh, I think he attends pretty regularly when he is at home.

4013. He was not here on the day I speak of?—In 1869—No; I think he was not in the commission of the peace then.

4014. I think you said you dissented strongly and formally from the observation of Mr. Stanley about the breaking of the windows being a trivial offence?—Yes.

4015. I need hardly say I am sure you were perfectly *bond fide* in so dissenting?—Yes.

4016. And I am sure I may also say that Mr. Nicholson in so dissenting as he did, and describing it by the word sacrilege was perfectly *bond fide* too?—I think so.

4017. Certainly?—Certainly.

4018. Then it was at that time a matter of such consequence that you considered it right in the interests of justice and the satisfaction of the people, to dissent from what he stated in that way?—I thought it would

create a bad impression, and therefore I thought it was necessary as Chairman to observe upon it.

4019. And I suppose you saw the effect produced by the observation of the gentleman—that it did produce that for the time?—I am not sure that I did observe it.

4020. You would think it very natural if it did?—Certainly, unexplained.

4021. You know that the northern Irish, particularly when derived from the peasantry, are a keen-witted observant people?—Very.

4022. No doubt about that; and any indications in the demeanor of the bench would naturally attract their attention or observation?—I think so.

4023. They fancy they can see what side a man is on by his demeanor?—They are very shrewd.

4024. I think you said at the time you gave your direct evidence, that these Twelfth-of-July businesses you would like to put down, if you could?—The Twelfth-of-July processions?

4025. Ay?—I think they are illegal.

4026. There is many a thing illegal?—I mean, of course, I would put them down.

4027. They are dangerous?—Oh, certainly.

4028. Don't you think that it would have been a desirable thing to have prevented that dangerous party coming into the town on the evening of the 12th of July, 1869?—Well, I conceive that the charge of that department was altogether in the resident magistrates who were here, that they were really the Government magistrates. I think "resident magistrate" is a very bad name, and confuses us sadly, and I think if they called them Government magistrates it would be better; and I conceive that that department was entirely with them.

4029. "Government magistrates," you think, would be better?—I do; I think "resident magistrate" is confusing, because we call one local and another resident, and the names seem wonderfully synonymous, and tend to create much confusion.

4030. Well, I believe the magistrates are not much misled by them?—Oh, no.

4031. And the common people are not?—Well, I cannot tell.

4032. And the bar are not, and the attorneys' bar are not?—Well, no; we understand it.

4033. You persist in what you originally stated that you thought that on those days the peace and security of the neighbourhood are fully in charge of the stipendiaries, the resident magistrates?—The course taken to preserve the peace principally rests with them—the line taken.

4034. And do you conceive that it principally rests with them now?—Yes.

4035. You happened to be there, though—you happened to be in the streets?—Yes.

4036. Now, whether do you agree or disagree with these propositions of the learned Sergeant, that it is not the business of the magistracy to initiate any proceedings?—I think it is the duty of the magistrates to—

4037. Would you kindly give me a direct answer? Do you disagree from the Sergeant or agree with the Sergeant when he says that it is not the business of the magistrates to initiate proceedings?

Sergeant *Armstrong*.—I did not say that—if you quote me correctly—but "to turn themselves into prosecutors."

Mr. *M'Laughlin*.—Well, to turn themselves into prosecutors—it is a more vernacular way of asking the same thing.

Sergeant *Armstrong*.—It is a very different thing.

Witness.—Well, I conceive it is the duty of the magistrates if they conceive that an offence has been committed to direct the Constabulary to follow it out; and I admit the responsibility of the magistrates so far.

4038. Mr. *M'Laughlin*.—I suppose you do not confine the responsibility to the resident magistrates on the one hand or the local magistrates on the other?—Oh, no.

4039. You think it applies to all?—Oh, yes.

4040. It was you prepared this defence of the magistrates that Mr. Lyle sent in?—Well, I will answer the question with pleasure.

Mr. Commissioner *COFFEY*.—I do not think he ought to be asked it.

Mr. *M'Laughlin*.—You do not think he ought to be asked it? It was amongst themselves.

Sergeant *Armstrong*.—I have no objection in the world. I have no objection on earth.

4041. Mr. *M'Laughlin*.—Who could write it? There is not a man in the court doubts it.

Witness.—Well, I drafted it, and submitted it to the magistrates, and they made alterations in it.

Sergeant *Armstrong*.—It is their joint production.

Mr. Commissioner *EXHAM*.—Signed by all, and all are responsible for it.

4042. Mr. *M'Laughlin*.—You were all sitting on it in the process of incubation, and this is the little chicken that came out. Now there is a gentleman here, Mr. John Hayden; are not you and he very good friends?—Yes.

4043. I mean so far as the difference in rank will justify the use of the expression?—Yes.

4044. And he is rather an influential man here, is not he?—Well, I think he is; decidedly he has a great deal of influence here.

4045. Socially, I mean he is rather a respectable man, a well-conducted man and all that?—Never heard anything to the contrary.

4046. And I suppose, having been present when he gave his evidence, you would say he was, as was once said of Mr. Dowse, "a man of considerable intelligence?"—Certainly.

4047. Do you think it at all calculated to mislead any person reading this defence of the magistrates, to refer to a gentleman like that in language like this:—"And they consider themselves justified in making this assertion as they are strongly of opinion that it was concocted by a publican in Dungannon of the name of Hayden, who alone of all its inhabitants joined Captain Ball in the charges he made at the police investigation, and who is the acknowledged correspondent of the *Northern Star*" (that is the paper whose veracity you illustrated by sending it on) "and took an active part in the investigation against Sub-Inspector Smith." Is it your opinion, as a gentleman who knows the effect of language on people at a distance, that that fairly represents the position of this gentleman with reference to the local community?—Well, I think it does, as much as any other person.

4048. Now, you think that your reference to him in that way among a quick-witted population, to whose intellectual activity you have borne testimony, would not tend rather to impress them with a feeling that you had a slight leaning towards the opposite party?—I certainly had a very great leaning to the opposite party—I was one of the inculpated magistrates.

4049. But, to the drumming party, the Orange party?—Oh, no; I think it has not any effect upon it at all.

4050. Do you think that the manner in which you treated that affair, which intrinsically is not of the slightest consequence, about the burning of the effigy of Mr. Dowse, and the language you employed, would or would not have a tendency to impress people with the opinion that you had a strong antipathy to the Catholics, and sympathy with the Orangemen?

Mr. Commissioner *COFFEY*.—Read the passage.

4051. Mr. *M'Laughlin*.—"With regard to another occasion memorialists state"—Of course you include in "the memorialists" Dean Slane and the other clergy?—Yes. We did not know—I declare at the time it was written we had no conception of any person having signed that memorial but Mr. Hayden himself, and I heard that he had signed it, that he had prepared it, but I knew nothing about the names to it.

4052. Now, having regard to the appreciatory character of your audience, listen to this:—"With regard

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to another occasion, the memorialists state 'that outside the town of Dungannon several hundred Orangemen, with drums and firearms, met for the purpose of burning an effigy of Mr. Dowse, a native of Dungannon——' " He is a native of Dungannon?—That is quoted from the memorial.

4053. That is the reason I use the quotation—and I think they ought to be proud of him in Ireland at large?—*Witness*.—So do I.

4054. (Mr. *McLaughlin* reads):—

"The magistrates believe the facts to be these:—On Monday, 9th February, 1869, the news of some success of Mr. Dowse in Londonderry reached the town of Dungannon."

Surely you knew very well what it was?—I did not; I believe it was something with regard to some decision of the judges with regard to the election, but I really do not know what it was.

4055. It was a new system of procedure, since you were at the bar?—It was.

4056. (Reads):—

"And the Roman Catholic mob made this a pretext for a political demonstration."

Now, I suppose you believed that it was merely a pretext?—I believe it was simply a political demonstration on their part.

4057. And that was the pretext?—Yes.

4058. (Reads):—

"And, as reported in the *Northern Star* of the following day, 'immense bonfires were lighted in the various streets of Dungannon, and though rejoicings on a large scale and of a general character were indulged in, there was not the slightest appearance of party feeling exhibited, with the exception that Colonel Knox, M.P., and Mr. Morell, (meaning the Reverend C. L. Morell, then Moderator of the General Assembly), were groaned.'"

That is the end of the quotation. *Witness*.—I do not think it is.

4059. Oh yes, it is. *Witness*.—Very well.

4060. I may ask this in passing, I believe it is a very common thing here, whether it may be desirable or not, to burn tar-barrels by way of illustrating public rejoicing?—It has occasionally occurred.

4061. Suppose I lived here, and that I was popular, which is supposing a great deal, and that one of my daughters was to be married, I dare say they would burn a tar-barrel?—I dare say they would, and all parties would join in it.

4062. And cheer just as readily for "Johnston of Ballykilbeg," and the police also. (Reads):—

"The magistrates believe that, so far as words go, there were words used which were much more offensive to the opposite party than drumming along these roads without playing party tunes."

That is still your opinion?—Yes.

4063. And you do not think that at all calculated to lead to the notion that the magistrates do not decide with absolute impartiality in these cases?—No; I do not think it has that effect at all.

4064. (Reads):—

"And they (the magistrates) also believe if the opposite party had attacked the mob at the bonfire, a breach of the peace would certainly have resulted; but the opposite party did not attack them, allowing their political demonstration full swing."

Do you conceive that to be language which illustrates the desire of the magistrates to guard against anything in their demeanor which might lead the public into the notion that they are not quite impartial?—I do not think it has anything to do with it at all. You are reading a statement of the magistrates which was to be sent to the Government, and that is all we know about it; I coincided with every word of that.

4065. And you still do?—Yes.

4066. And the propriety of the language does not seem to you to be in any way objectionable?—Well, I do not know. If you point out anything that is—I do not see anything wrong with it.

4067. (Reads):

"On the 19th of the same month a number of people designated in the memorial as Orangemen, for a counter-demonstration, and with drums proceeded to a hill close outside the town of Dungannon, lit bonfires there, and, some say they burnt the effigy of Mr. Dowse."

Have you any doubt in your mind they burned the effigy?—Every doubt; and not only that, but the *Star* report that you will find there throws a doubt upon it too; and I have very considerable doubt, so far as I am personally concerned, that there was any such thing. I do not know. It might have been. I was not there.

4068. You are still doubtful about it?—Yes; whether that fact took place—at least I did not hear it sworn here by anybody; if I did, I would have believed it.

4069. We were not in a position to be assistants at the execution as you would have been?—Oh, no.

4070. You do not always pin your faith to the statements of the *Northern Star* as to whether a local fact took place or not. Could a hen lay an extra-sized egg in Dungannon without Mr. Courtney Newton knowing it?—I will tell you about that. I understand Mr. Hayden is the regular correspondent of the *Northern Star*.

Mr. *Hayden*.—It is a mistake.

Witness.—I thought so; that he was the correspondent of the *Star*, and therefore I considered, taking the prominent part that he did with regard to the police inquiry, and the evidence he gave there, that it was very fair to quote from that paper, which I considered—in fact, I thought it was his article I was quoting from.

Mr. *Hayden*.—You were right in that.

4071. Mr. *McLaughlin*.—Now, had you not just as much certainty in your mind to enable you to say it was a fact, as to his being correspondent of the *Northern Star*, as you had as to Mr. Dowse's being burned in effigy?—No.

4072. (Reads).—The *Northern Star*, before alluded to, describes it thus:—

"On Friday evening, at about eight o'clock, a number of those reliable for office, business, or effect, at any time, marched out of the town in the direction of Killyman, for the purpose, evidently, of beating up recruits, but in this they signally failed. They, nevertheless, did not desist from their purpose, and would have tried to burn Dowse in Market-square——"

But, in fact, it was in Windmill-hill that he was burned?—Well, I do not know.

4073. But the thing that they say they burned?—Yes.

4074. (Reads):—

"But that our gallant member (Colonel Knox, M.P.), feeling the danger of such an attempt, dissuaded them. They therefore went on an adjacent hill, passing through the streets in the suburbs, shouting party cries, beating drums, and firing shots——"

I believe there were some shots fired?—Yes, I heard some when I came up.

4075. (Reads):—

"I cannot exactly say if they did burn the effigy of Mr. Dowse——"

That is what you spoke of?—Yes.

4076. (Reads):—

"They lit a large bonfire and drummed round it about two hours, but hundreds of shots were fired on their return up Scotch-street. Some three hundred, with drums, firing shots and yelling, produced the greatest possible terror; and, judging from former experience that the town would be wrecked, the greatest consternation prevailed, and arrangements were hurriedly made to resist any attack on the town. At Moon's hotel a collision took place, &c."

Now, does not " &c." cover, among other things, the hurt to your own leg?—I suppose so; I forget.

4077. Do you attach much consequence to that leg—I suppose you have no greater fancy for the one leg than for the other?—No.

4078. It would seem from this that there is one of

them different. It goes on to say that you were dining with Colonel Knox, and that a policeman came to Dungannon Park, announcing that there was danger of a row in the town, and that you and he came up in hot haste. By-the-by, who is that man who is sitting there with his hand on his mouth, where you were sitting for the first few days—that man there (pointing to a man in court)?—Mr. Moon.

4079. What is his business?—I do not know.

4080. Has he any business?—I do not know.

4081. He is not a clergyman?—No.

4082. Well?—I think his business is in assisting his brother-in-law that is in buying butter. He used to be; I do not know whether he is or not.

4083. He is not an Orangeman by profession?—I cannot tell.

4084. (Reads):—

“They had arrived at Moon’s corner when the drumming party advanced up the hill towards where they were, and stones were rapidly flying from both sides. Mr. Newton received a blow of a stone in the leg, of no great consequence.”

Now, which leg is that?—The blow was of no great consequence.

4085. “Mr. Newton received a blow of a stone in the leg, of no great consequence?”—The blow was of no great consequence.

4086. “And some panes of glass were broken in Mr. Moon’s house, a Protestant hotel-keeper.” Don’t you think it was a very undesirable thing, the whole affair?—I do not think it was desirable.

4087. And might it not have produced rather serious results—supposing you had been a hot-tempered man, instead of being a quiet, knowledgeable, sensible, self-controlling man, might it not have led to a great deal of trouble; might it not have broken the leg, you know?—Well, I would have very strongly objected to it.

4088. And do you think this is proper language for any man, a magistrate, to refer to that in:—“The magistrates consider that it is a gross exaggeration to use with regard to it the language of the memorial that it was a ‘fearful outrage,’ though a ridiculous exhibition of party feeling on both sides, which for a time menaced the town?” Now, don’t you think that it is calculated to lead people, rightly or wrongly, to the notion that the magistrates are not doing what they ought to do?—Well, I think not with regard to that transaction. I think it was a legitimate action on the part of anybody, on the one side, who was opposed to Mr. Dowse, to have that display, just as much as it was perfectly legitimate and right to have the bonfire in his favour; and I consider both were legitimate. And I should say for myself, that if I were to consider it, I would be for the bonfire in his favour, because I so highly like him and respect him. I have known him since he was a little boy.

4089. I believe the day that the bonfire was burned there was no firing of shots?—I was not here, but I believe not.

4090. Now, in the hope of trying to get you to agree with the established authorities in the law, I will quote them from a paragraph in page 53 of the Donoghmore Inquiry. I think, if I properly took your evidence, you said that the offence must be in the criminal?—The offence for which he is charged must be in himself. That is my impression. I may have expressed that wrongly.

4091. Not at all. I think that is very proper, except in a case of this sort. In point of fact, one would think it was an expression in one of those law books that you object to?—No, I never read one about it.

4092. And there is a great originality in your law too?—That means that it is bad law at any rate.

4093. Now listen:—“The essence of criminality in such cases is the terror and alarm with which the peaceable and quiet subjects of Her Majesty must almost necessarily be affected”—(you see that is not in the criminal)—“even those who are endowed with firmness and resolution; and therefore I have no hesitation in saying that such tumultuous assemblies

at night can hardly, under any circumstances, be other wise than criminal.” Having heard that, does your opinion remain the same as you expressed before?—Now, will you read the last line of that?

Mr. Commissioner COFFEY.—What are you reading?
Mr. *McLaughlin*.—I am reading Lord Chancellor Brewster’s letter, in which the opinions of the judges are summarised and quoted.

Witness.—What is the last part of that—the last line you read?

4094. Mr. *McLaughlin*.—“The essence of criminality in such cases is the terror and alarm with which the peaceable and quiet subjects of Her Majesty must almost necessarily be affected, even those who are endowed with firmness and resolution; and therefore I have no hesitation in saying that such tumultuous assemblies at night can hardly, under any circumstance, be otherwise than criminal.”

Witness.—Now, let me observe upon that, before you go further—first, you say they are tumultuous assemblages; secondly, he says “hardly”—that is, “it is possible the circumstances might be such, that it might be, but that it is hardly so;” and I agree with him. I agree with every single word that is there.

4095. But would you put down the drumming parties in consequence?—Well, I will tell you what I would—

4096. But would you or would you not?—Well, I will tell you.

4097. Well, would you?—Some of those drumming parties I would put down, and some I would not. That is my answer—according as I felt in my conscience or from advice of authority, that I would put them down.

4098. Do two and two make four?—Yes; I think so.

4099. I knew you would not say it absolutely?—Very well; I think I answered you very plain and plump in the other instance.

4100. I think you did, and for fear we should lose the genial temper that has characterized the cross-examination I will sit down.

Re-examined by Sergeant *Armstrong*.

4101. Do you regard all those drumming parties about this district of Dungannon, and about here—do you regard them all as offensive?—Yes.

4102. When heard by Roman Catholics?—Most assuredly.

4103. Do you think that all those drumming parties, without any distinction as to locality or the neighbourhood in which they are, are calculated to produce a breach of the peace?—No.

4104. Well, would you just state what distinction you take—I will give you an instance. Suppose a drumming party assembles at any rendezvous—perhaps they will think a cross-road a convenient place to meet at—and that the Protestant population entirely preponderates, that there is not the slightest chance of any breach of the peace following it, and there are some Catholics within hearing, and they are offended at it, but there is no possibility, we would say, of a breach of the peace; do you consider that the law as it at present stands would justify you in sending forward the members of such a party as that for trial?—That is my opinion. I may be wrong.

4105. That it would not?—Yes.

4106. Now, is it in reference to such a class of cases as I have given to you, where there is no reasonable chance or prospect of a breach of the peace being produced by the drumming, is it in that case that you feel a difficulty in applying the law as laid down about unlawful assemblies?—Well, I went a little further than that, whether it is right or wrong. My view is that, supposing there is a drumming party at any particular place, I do not care where, and I am perfectly satisfied that if that drumming party proceeds to another place a breach of the peace would occur, my impression is, or was—I am not certain about the law, but I give it as a lay opinion—that that would not be illegal, because there is no immediate danger of a

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breach of the peace, at the time the action is pointed out to me, we will say, or at the time referred to; and unless there is an immediate danger in the elements concentrated on the one particular spot, where the man is charged with the guilt, my opinion is that it is not. But I do not say further than that.

4107. But now, if the law adviser, or a new act of Parliament announced that any drumming party whatever, irrespective of the locality, or of any likelihood of a breach of the peace was illegal, and if the law adviser announced that, are you prepared to take information and send men for trial pursuant to that advice?—Most assuredly, and I believe every member of the bench would be the same, and I have already stated it in the earlier part of my examination.

4108. Do you consider that you have never heard any opinion of the law adviser, or any opinion of Lord Chancellor Brewster, or any judgment of Chief Justice Monahan, or anybody else, which authorizes you to exclude from the consideration of illegality the element that it is calculated to produce a breach of the peace?—Until after Lord Chancellor Brewster's opinion, until after those informations sent up with regard to the breaking of the chapel windows and assembly there, until those were sent back to us, telling us that they did not disclose an offence, but that if they were guilty of riot we might prosecute them—until that was done I was of opinion that the parties marching through the town could be properly indicted. But after we got that back, and several other cases of the same sort back, I say we were not satisfied about proper advice or sufficient authority.

4109. Do you regard the law adviser's opinion, or Lord Chancellor Brewster's letter, or the charge of Chief Justice Monahan, which has been referred to, as authorizing you to send forward parties for trial for the mere act of drumming, although you did not think the drumming was calculated to produce a breach of the peace?—That is my opinion.

4110. Do you believe that according to the right construction of all the opinions stated there there must be evidence of an immediate likelihood to produce a breach of the peace to warrant you in sending them on for trial?—That is my opinion.

4111. And if that element be excluded, and you receive direct authority from the Castle to send them on for trial, whether there is such evidence or not, would you be prepared to do it?—Most assuredly, and always was.

4112. Are you prepared to act to that extent?—Yes, perfectly.

4113. Do you consider those drumming parties ofensive?—I do.

4114. And is it your feeling that you are shackled in your application of the general law of unlawful assemblies by that consideration of the immediate tendency to produce a breach of the peace?—Yes.

4115. Mr. Commissioner EXHAM.—I am of opinion that one of the witnesses stated that you yourself read out the law adviser's opinion, and that you stated at the time that your opinion did not agree with his?—No, sir, I did not, because I remember the occasion when that was referred to, and I cannot say whether it was not on the occasion when that was read out, but I did not read it. I stated, hoping that it would frighten people from this, that for my part we were prepared to act upon the law adviser's opinion, and no matter what my private opinion was—and that was because, I suppose, everybody knew—I have discussed it openly; this point may be something in my mind, but I have discussed it openly with twenty people, and I wanted just to say that having heard that opinion, as I said before, that I should consider the magistrates are bound to take the law adviser's opinion the same as we would take the opinion of a judge telling a jury to find a verdict for plaintiff or defendant; and we were bound to do it, no matter what actions were brought against us at law or not.

4116. Have you heard the magistrates speaking publicly from the bench with regard to these processions?—The drumming parties? As for processions

everybody has spoken about them, but as to drumming parties I cannot bring to recollection that I myself ever spoke in that way; but I have viewed it very much as being a horrible nuisance, injurious to the general welfare of the community. I agree in what was said, that this would be a very happy and peaceable town, where all parties could pull together for the general benefit; but these things are an element of discord amongst us, and therefore any man who wants to get peace would be glad to get rid of that element of discord.

4117. Before the 12th of July every year have the magistrates from the bench spoken about the demonstrations that take place on those days?—I cannot call to recollection any occasion, but it is notorious; there could be no use in speaking, for we have spoken publicly and privately and in every way. I am sure the other magistrates have. I have done so myself.

4118. Have you yourself spoken to persons who would carry on these things, and remonstrated with them privately?—Well, I cannot call to recollection any occasion on which I did, but I am sure that I did. I protested against it in every way that I could.

4119. I think you stated that on those occasions of the 12th of July the stipendiary magistrates who were here blocked the town?—Yes.

4120. And prevented any persons from the country getting in as far as possible?—You know there are different roads from the town that they cannot help, but they blocked the main body of the town, and I think that is the best thing for peace, and we concurred in that. The last time I remember we had a conference, and we laid our plans and guarded against collision. We sent for troops and police, and stated the different localities where we thought they should be placed.

4121. We had it from Mr. Heard that you had communications with him?—Yes.

4122. And sent up a requisition to the Government for the troops you thought you would require, and the stipendiaries?—Yes.

4123. And then you consulted with the stipendiaries, and left the carrying out of the arrangements entirely with them?—I could not say in that way "the carrying out entirely;" but what was generally said was this:—"You take the lead in the case, but we are always ready either to confer with you or take any part in the arrangements which may be considered best by the magistrates upon that conference." We are ready either to stand at one part of the street or another part of the street; in fact, to command the military or police.

4124. And on those occasions were the local magistrates in the town or some of them?—Well, I believe that four times I was here. I think I was the only one this last time. The question is a sudden one, and I cannot answer it perfectly. I believe I was the only one, for the last two years, that was in the town. I believe I was. I may be wrong.

4125. Mr. Commissioner COFFEY.—A moment ago you said that you regarded those two anniversaries, one in favour of Mr. Dowse and the other against him, as legitimate and fair?—Yes.

4126. And these, we have already in evidence, had no connexion whatever with drumming parties?—Except that the latter was a mere drumming party. I could not shut my eyes to that.

4127. But that was not in the character of a drumming party at all?—No, not at all.

4128. It has been sworn here, and up to this it stands in proof uncontradicted, that on the occasion of the demonstration in favour of Mr. Dowse, although tar-barrels were blazing about, and crowds shouting and cheering, there were no gun shots fired?—So I believe; I was not here, but I believe not.

4129. It has been stated by some of the witnesses here that there was a continued incessant fusillade, if I may use the expression, when the counter-demonstration was got up?—So it was stated.

4130. Others stated that the shots were not so frequent?—Yes; two of the policemen swore—

4131. Now when you said you thought it was a legitimate demonstration, did you intend to convey that the firing of shots at night was legitimate or proper?—Well, that was a very improper thing, I think, the firing of shots; but at the same time it is to be borne in mind, not to excuse it at all, that for instance, if you have bonfires in the street you could not fire shots, but this was outside the town. I doubt very much about the bullet question, and I think it was more a certain amount of *bravado* shown to the opposite party. I think that is very likely, and that is just the very same reason that there is firing of guns on many occasions; but I think it was a bad thing to do.

4132. Do you think, as a magistrate now, that it was a proper thing, or that the firing of shots at night to alarm and terrify people, should be approved of in anyway?—Most assuredly not.

4133. You also said that, according to your conception of the law as it at present exists, there must be in fact two hostile parties facing each other to justify you in interfering?—I did not go quite to that extent.

4134. I want to put a case to you. Suppose you were satisfied by information, by your own knowledge of circumstances, that a party were proceeding out of this town to join another party who were assembled further on, with the view of meeting a hostile party when the forces were sufficiently concentrated to go into a pitched battle with each other. Do you consider, as a magistrate, that you would have sufficient authority to stop that assembly and prevent it marching, and to take the names of the parties and summon them for forming part of an assembly calculated to produce terror and alarm ultimately?—I will tell you about that. Suppose that the informations stated that a party of people were going out—that any person swore informations that they were going out of the town, and that the person believed that that party was going out for the purpose of joining another party that were going to have a pitched battle, I believe that I should be perfectly justified in arresting those parties, and holding them in custody until all danger was over. I believe I should not be justified in sending those parties to trial as for an illegal assembly. I may be wrong.

4135. Of course every man according to his lights?—I want to put my proposition clearly.

4136. So you have most clearly, and the conclusion that I derive from your evidence is that you do not think you have authority or power to put the law in motion so as to make the people amenable, and send them for trial as forming an assembly calculated to create a disturbance and breach of the peace, unless it is likely imminently there and then to occur?—Unless that the party going there at the time of the arrest, and at the time which I say is the period of the offence, at the time of the arrest—I say that unless there is a danger of a breach of the peace at that time; from the evidence that the parties are going out, my opinion, it may not be worth two pence, but my opinion is that we could not send them for trial for an illegal assembly, but that we could hold them in custody for the preservation of the public peace until the danger was over; and I believe that law has been recently exemplified, not long ago, in Derry.

4137. You have stated just now that you consider yourself entitled and bound as a local magistrate—I use that phrase as contra-distinguished from the other—to co-operate with and assist the resident magistrate, and you do not think your functions are ignored or put in abeyance, because there is a resident magistrate?—Certainly not.

4138. Do you consider it your duty as a magistrate if you had heard that last night or last week there had been a breach of the peace in the town or neighbourhood, and if on inquiry you found the police remiss in their duty, not inquiring into it, or taking steps to ascertain who were the parties in the commotion or disturbance, would you consider it a part of your magisterial duties to speak to the police in reference

to this transaction?—Most assuredly, if they did not first speak to me; but I believe none of those things ever occurred that the police were not perfectly ready, if they knew anything about it, if it was disturbance. There is another thing in which there is a very great deal of danger, I think. Having charge of a district where there is a mixed community, I believe a great deal of irritation and bad feeling often arises from what takes place in the petty sessions court amongst the lower classes; and I say that you should as much as you possibly can, avoid this, unless it is a case where you are certain that you can hold them—certain of it. I think it is a very bad thing to have abortive trials that produce irritation of feeling, unless you are perfectly certain that they can be convicted.

4139. I quite admit that, and hold the opinion that it is a great deal better to let a thing die out of memory than to keep up irritation; but that is a matter of discretion of course?—Discretion, of course.

4140. I just want to call your attention to another thing. You say that you would not interfere with the drumming parties so long as they confined themselves to a neighbourhood where the great preponderating majority were of their own way of thinking?—I do not think I can by law.

4141. You do not think you can by law, but supposing you had a law that enabled you to cope with that, in your judgment, acting as a magistrate, do you think it would be an advisable and prudent thing to exercise that law and put it down, although the preponderating majority of the community sympathized with those drumming parties?—Well, sir, I will tell you where there is a difficulty about that in my mind. I will take it in any other part of Ireland. I say that if we tie up too tight the right of public meeting, and the right of the populace to exhibit their political feelings, I think we are trampling upon liberty and committing a greater crime than actually we are doing by a little neglect.

4142. I quite concur with you, too, in that proposition. I have the happiness of agreeing with you; but I want to call your attention pointedly to this. Suppose in a neighbourhood where the great, the immense majority were Roman Catholics, as is the case in some parts of the country, and suppose the others were a very small minority indeed, and that the Catholics were in the habit of going out with drums and fifes, and that these proceedings, you, as a magistrate, were satisfied upon sworn informations were regarded by the Protestants as a challenge to fight, and a crowing over them; would you think that a right thing to continue?—Well, sir, not according to my notion of the law.

4143. You think not?—I think not. I think I would have no power to send them for trial.

4144. But suppose you had power to do it?—Oh, most assuredly I would stop it on both sides.

4145. In other words, putting aside your position as a magistrate, as a gentleman, and having education and all that, you would not permit the feelings of a small minority to be wounded, or irritated, or tantalized?—Well, sir, if it was done for challenge, to annoy those parties, I look upon it as quite distinguished from a political demonstration, no matter what it is, Fenian or Conservative, or anything you like.

4146. Do you regard those drumming parties as political demonstrations in the true sense of the word?—I think, originally, they began that way, but I think they are becoming now, instead of political demonstrations, offensive demonstrations.

4147. You heard a number of Roman Catholic witnesses examined here, and the County Inspector, and the parish priest, and a number of other gentlemen examined here, and those people have all in terms, and substantially, sworn that they are regarded as actual challenges to go out and fight. Now, having that information before you, sworn to, don't you think, as a magistrate, it would be in the highest degree necessary to prevent the existence hereafter of counter-demonstrations and counter-bands, which would in-

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evitably provoke a breach of the peace—don't you think it would be a proper and right thing to put those down?—Perfectly so, but there is not the power.

4148. That is your difficulty?—Yes.

4149. And would you recommend that if the law be not sufficient at present, the Legislature should be induced to give you a summary jurisdiction to put them down?—Certainly, for this reason, that the Legislature can decide how far political demonstration, and what sort, are right and legitimate, and what sort are not, and that will be decided by Parliament, and men who can do it.

4150. Do you think that those gentlemen were sincere, and do you think that the evidence is faithful of those people who have sworn that they are regarded and looked upon as a challenge to the opposite party?—I am satisfied that the evidence we have heard, with one or two little exceptions, which Sergeant

Armstrong observed upon, was the fair, honest, and candid belief of the persons who gave it.

4151. Then there would be no difficulty, as far as the magistrates were concerned, in applying the law if they had it, to receive a summary jurisdiction in the instances we have had before us?—No, sir.

4152. You were not a magistrate in 1865?—No, sir.

4153. Did you ever turn your attention to this. You know that every year, before the anniversaries of July, the magistrates confer together as to getting an overwhelming body of police. Did it ever occur to you to consider the expense to the public of that overwhelming force?—I never regarded the expense to the public, for I really wanted to keep our own place quiet.

Mr. Commissioner EXHAM.—I have just had a telegram to say that the depositions of 1869 and those of 1870, have both been found at the Castle, and will be sent down to-night to us.

Charles
Stanley, esq.,
J.P.

Charles Stanley, esq., J.P., sworn; examined by Sergeant Armstrong.

4154. You are a magistrate?—Yes.

4155. About when were you appointed?—1855.

4156. I believe you were examined upon the police investigation some little time since?—Yes.

4157. And you were asked there by some gentlemen whether you were an Orangeman or not?—I was.

4158. And you declined to answer?—I did.

4159. And did you consider it perfectly irrelevant to the inquiry under the charge by Mr. Lynch against his Sub-Inspector?—Yes.

4160. And was that the reason why you declined to answer?—Yes.

4161. And are you an Orangeman?—No. And I was also asked was I a Freemason, and I also declined.

4162. And I suppose you thought that was also irrelevant?—Yes.

4163. Mr. Commissioner COFFEY.—I did not know that Freemasons were considered a political body.

Witness.—One question was pressed on me as well as the other.

4164. Sergeant *Armstrong*.—Do you recollect the day of the matter about the breaking of the chapel windows?—Perfectly.

4165. You were one of the magistrates?—Yes.

4166. And the case was arrived at in the usual course of things when its turn came in the petty sessions book, and then there was a certain amount of investigation into it?—Yes.

4167. Do you recollect Mr. Newton's proposition in reference to taking it up again after the business should be disposed of—just state your recollection?—After Mr. Young for the defendants had applied for a postponement, stating and going into the particulars of the case, a postponement was granted and Sub-Inspector Smith—I speak from recollection—asked to have a private inquiry to examine witnesses to find out who had broken the windows. I said it would be most irregular, when the case was before the Court, and that if Mr. Smith or any other police applied for summonses they would get them, or if on a proper inquiry there was evidence to suggest any persons or others implicated they would be granted, but I thought the offence of breaking a few panes of glass was too trivial for the magistrates to travel as I thought out of the act of Parliament and would not be at all fair to the defendants.

4168. The case was actually pending?—It was.

4169. And partially heard?—Yes. I also said that I thought the administration of the law should be pure and above suspicion.

4170. And you wished for no private inquiry?—No private inquiry.

4171. But to have the whole thing in open court, and if the police could suggest new witnesses, to summon them?—Yes.

4172. It was in that way you meant it?—Quite so.

4173. Did you intend to convey that the breaking of the windows of a chapel or any house of worship was a trifling offence?—No; I think it was a great offence to break the windows of any house of worship.

4174. Did you mean anything disrespectful at all towards Catholicism, or the people who go to chapel?—Certainly not.

4175. Have you attended pretty regularly at the bench here?—Yes.

4176. And have you known Mr. Ball since he was appointed?—I have.

4177. And have you met him continually on the bench?—Yes.

4178. And have you come in contact with him as a resident magistrate?—Yes.

4179. And have you all as far as you could observe co-operated together in the public service and for the public good honestly to the best of your judgment?—I thought so.

4180. Did he ever intimate to you any dereliction of duty on your part or find any fault with anything you had done or left undone?—Never.

4181. Did Mr. Ball or anybody else in court ever suggest that you had been guilty of partiality or miscarried in your decisions?—Never heard of it until I read it in the papers after the police inquiry.

4182. Now, are you conscious to yourself of any partial or corrupt or improper conduct of any kind on your part as a magistrate?—None.

4183. Do you know anything of the sort amongst your brethren on the bench?—None.

Cross-examined by Mr. Barry.

4184. I suppose you consider the position in which Captain Ball is placed here as a resident magistrate just imposes on him the same class of duties as any other magistrate in the district?—I do.

4185. And nothing special?—Nothing more except this, that being always supposed to be in the one place and always constant, that is the only difference—and that of communication to the Government which it is not our duty to do.

4186. I suppose you would consider that the fact of Captain Ball being a Roman Catholic gentleman resident here as resident magistrate would make it rather injudicious on his part to exhibit in those party cases where the Orange party were concerned any special or unusual activity beyond his brethren on the bench?—I think it would be injudicious on the part of any magistrate.

4187. But I think you will admit that there would be probably peculiar injudiciousness on the part of a Roman Catholic gentleman in that position, to exhibit more activity than Protestant gentlemen who may be supposed by them to take a less partial view of their position?—Well, really I do not know. I do not think there should be anything of the kind.

4188. I am not speaking of what there should be

but what the probable effect of the judgment of uneducated men would be. Don't you think it would lead to suspicion that their cases were not so fairly tried if they saw a person of different creed and unconnected with the locality take any specially active part as distinguished from his brother magistrates?—Really I cannot say that, in my mind.

Cross-examined by Mr. *McLaughlin*.

4189. I presume you read the memorial?—Yes.

4190. Carefully?—Well, I will not say that.

4191. Oh, do, now?—No.

4192. I think by appearance you would be a gentleman that would read anything you read carefully, and very carefully?—Well, you may mistake me.

4193. Have you not had the advantage of professional training?—Very little indeed.

4194. But that little was good of its class, you having been an attorney?—Yes.

4195. And, I suppose, now, you know all about it. Now, you have been asked by the learned Sergeant, at the beginning of your examination, whether on the occasion of the police inquiry you were asked were you an Orangeman and you have told us the reason why you refused to answer the questions, and you say you are not?—I do.

4196. You never were?—No.

4197. Now, I suppose, Mr. Stanley, you would not think it altogether foreign to the scope of this inquiry to ask such a question having regard to the charges made of partiality?—No; I think the inquiries are totally different.

4198. And now I may say with respect to the other question, that of Freemasonry, as I know nothing about it I will not cross-examine you about a thing that I am not up to—so that animal with the long beard and sweet voice won't be disturbed by me. I see on that occasion the president of the court said that he also was a Freemason?—I think so.

I neither know nor care whether anybody here is.

Mr. Commissioner Coffey.—And you may go further—that the fact of his being a Freemason would not be in the slightest degree an imputation on his impartiality.

4199. Mr. *McLaughlin*.—You might as well be asked whether you had a wart on your nose. At all events you know the people pretty well?—Well, indeed I do not.

4200. Ah, I thought you did. Have you not lived in this locality as a country gentleman for a long time?—Yes.

4201. And have you not been in the commission of the peace since 1855?—Yes.

4202. That is sixteen years—a good time in a man's life?—Yes.

4203. And I see by the reports in the papers that you sit here pretty constantly as a magistrate?—Yes.

4204. And am I taking an undue liberty in suggesting that you know the people pretty well?—Well, I do not—I do know them pretty well.

4205. You know them generally—better than a man who would be here twice a year?—Oh, certainly.

4206. In point of fact you know them just as much as any man who would have your opportunities?—No; there are some persons who have greater, or who never forget persons that they have once seen.

4207. But it is not a question of identity at all?—Then what is it?

4208. Don't lose your temper?—I am not losing it at all.

4209. I mean you know the habits of the people and their turns of thought, and modes of expression, their likes and dislikes, loves, hatreds, and public tendencies?—

Sergeant *Armstrong*.—I wish the reporter joy of taking all this down.

Mr. *McLaughlin*.—It arises from the solemn impeccability of the witness.

Sergeant *Armstrong*.—It will be laughed at and become a subject of public ridicule if taken down that these are questions.

Mr. *McLaughlin*.—Do you think that if that were the fact the Sergeant would object to its being taken down?—

Sergeant *Armstrong*.—I wish to be away from this before Christmas.

4210. Mr. *McLaughlin*.—Do you know the people as a magistrate?—Really I do not understand your question.

Mr. Commissioner Coffey.—You see it is a very complicated question.

Mr. *McLaughlin*.—If I asked the learned Commissioner whether he knew the people of the place in which he has been presiding for some years back, I think he would have no difficulty in understanding what I meant.

Mr. Commissioner Coffey.—Well, I should understand it certainly.

4211. Mr. *McLaughlin* (to witness).—You being a magistrate here for sixteen years do you know the people?—

4212. Mr. Commissioner Coffey. — Oh, do you know their habits, and ways, and feelings?—Oh, yes; I do know their habits.

4213. Mr. *McLaughlin*.—Now do you think it is unnatural that they should be a little excited about these drumming parties?—Quite natural.

4214. I dare say you yourself are opposed to those drumming parties?—I am.

4215. Strongly?—I am opposed to them.

4216. Not strongly?—Well, I would be better without them.

4217. Would your answer be better with the word "strongly"?—Well, yes; I am strongly opposed to them.

4218. Very strongly?—Oh—

4219. Now have you no little bit of lingering love for them, between ourselves?—For the drumming parties?

4220. Yes?—None whatever.

4221. And if you had law enough for it down they would go—eh, is that so—would you put them down?—I would stop them if I could.

4222. Putting them down and stopping them are nearly the same thing. It is because the law in its present condition is not, as you regard it, sufficient for that purpose, that you do not put them down—you need not answer hastily?

Sergeant *Armstrong*.—I object to that question, for it assumes that the witness has not put them down, and assumes that he has been guilty of some dereliction of duty.

4223. Mr. *McLaughlin*.—Did you ever put them down, for if you had not law enough there would be no dereliction of duty in not putting them down—did you ever put them down?—Well, I do not recollect any case in particular.

4224. And I believe they are generally prevalent?—They are.

4225. Do you think they are hurtful to the feelings of the people called Catholics?—Certainly.

4226. And naturally so, I suppose?—Yes.

4227. And therefore dangerous to the public peace, and naturally so?—Yes.

4228. And therefore things to be put down if there was law for it?—Yes.

4229. And why have you not put them down—is it because you believe you have not law for it?—Cases have not been brought before us.

4230. Who is to blame for that do you think? Do you agree with Mr. Newton in the answer given by him to one of the learned Commissioners, when he said, on being asked whether if he knew of the existence of turbulence or any bad practices which had not been brought under his notice, he would consider it his duty to speak to the police, that he would consider that to be his duty. Do you agree with him in his opinion of his magisterial duty?—I think it is a magistrate's duty if he knows of anything improper not reported to him to speak to the police on the subject.

Mr. Commissioner Coffey.—There is no doubt, no question of it.

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Witness.—I do not think I have ever known an instance in which the smallest affray or assault took place which was not reported.

4231. Mr. *M'Laughlin.*—That is, as contradistinguished from drumming parties?—It is a lighter offence in one way.

4232. And graver in another?—Yes.

4233. You think that knocking a man down would be less than one of those drumming parties?—No.

4234. Knocking a man down would be greater?—I think so.

4235. And that is your honest opinion?—It is.

4236. I don't mean an aggravated assault when a man knocks another down, and then kicks him for falling, or anything of that sort; but an ordinary knock down like an auctioneer. Now are you really grave and serious in saying that a common assault committed between A B and C D is a graver and more serious thing than a drumming party, which has produced this inquiry?—

Sergeant *Armstrong.*—He did not say that at all. He did not say "common assault" at all. He said knocking a man down.

4237. Mr. *M'Laughlin.*—Do you think that knocking a man down is a graver offence than what we are considering?—

Mr. Commissioner COFFEY.—When you say "what we are considering," we are considering four or five classes of those offences.

Mr. *M'Laughlin.*—According to my view of the case as it now stands it is this—I conceive that we are now considering on the cross-examination of the evidence, the evidence given in the first place as to the existence of drumming parties, and we are considering the class of drumming parties to which the testimony was then borne.

Mr. Commissioner COFFEY.—My opinion is that the fair way of considering this gentleman's evidence, and the fair way of getting him to say what you want, is to put it to him more directly. My opinion is, and probably others entertain very much the same idea, that though in a moral point of view there can be offences more serious, such as murder, robbery, and so on, this is an offence against public policy and public tranquillity; but it does not bear the same moral aspect as that of a man who has been detected in stealing cattle, or plundering houses, or things of that sort.

Mr. *M'Laughlin.*—As to the plundering of houses there is a slight affinity between them as regards the affair of 1865. I admit that illustration readily.

4238. (To witness).—Do you conceive that the law as expounded by Chief Justice Monahan is right?—I do.

4239. Do you consider that the law as expounded by the law officers of the Crown is right?—If you refer to a special opinion of the law officers—I am not a learned man.

Mr. Commissioner EXHAM.—I do not think it is fair to ask the magistrates whether they consider the law laid down by Chief Justice Monahan is right.

Mr. *M'Laughlin.*—Do you think so?

Mr. Commissioner EXHAM.—I do, distinctly.

Mr. *M'Laughlin.*—Then I conceive and respectfully submit to the Court that if they find a magistrate taking the view of Mr. Newton, who analysed with a wonderful skill the opinions of judges in England and Ireland, and official opinions of the law officers for the advice and direction of the magistrates in reference to transactions either identical with those or analogous to them, it becomes, I think, a vital matter to see whether any other magistrates take such a dangerous liberty of not being governed by the law that ought to govern them. I beg leave to refer to the evidence of Mr. Newton, as exhibiting a distorted skill—

Sergeant *Armstrong.*—You may make that observation in your speech, but not now. He gave it as his opinion, and he gave it as a magistrate.

Mr. *M'Laughlin.*—That is what in my opinion I conceive to be distorted skill.

Mr. Commissioner COFFEY.—In strictness you have no right to answer that it is distorted skill on his part. That is only another way of conveying the same thing.

Mr. *M'Laughlin.*—I generally know the words I am using. I intended to convey, whether my rhetoric carried out my mental intention is another thing—I use that in compliment to my friend, Mr. Newton.

Mr. Newton.—I decline the appellation.

Mr. *M'Laughlin.*—I meant to say that he exhibited a great deal of distorted skill in my judgment; but the distortion may be in my judgment. I did not mean to say that he did intentionally what was wrong, because I bear testimony really to the professional and absolute honesty of Mr. Newton; but he seems to me to turn propositions of law over and over again in a way that was most dangerous.

Mr. Commissioner COFFEY.—And he may be perfectly *bonâ fide* in the opinion he expressed.

Mr. *M'Laughlin.*—And it is part of my case that the danger is increased by his *bonâ fides*.

Mr. Commissioner COFFEY.—I conceive that you are quite entitled to get out from this gentleman what his view of the law, as it at present exists, is.

Mr. Commissioner EXHAM.—All I objected to is to asking gentlemen in the position of magistrates of this county whether on their oaths they think the law as laid down by the Chief Justice of the Court of Common Pleas correct or not. I do not think it is respectful to a high functionary in this county. I have not the least objection to your putting it in now to see does he agree with that statement of the law of Chief Justice Monahan. I do not see the slightest objection to that, without having the question go in that form—"Do you think the law, as laid down by Chief Justice Monahan, is correct?"

Mr. *M'Laughlin.*—It is incorrect according to the interpretation given by Mr. Newton.

Sergeant *Armstrong.*—Mr. Newton did not say it was incorrect. He said it was not applicable to the peculiar circumstances of the case.

Mr. *M'Laughlin.*—That was an involuntary distortion. What I would respectfully submit to the Court, and particularly to Mr. Commissioner EXHAM is this. Suppose this to be the case of A, B, C, or D, a magistrate who comes up, and either expressly or impliedly says that a certain doctrine of law vitally important to the preservation of the peace in its application, is one that he will not be governed by—I ask Mr. Commissioner EXHAM would he think that gentleman entitled to hold the commission of the peace for twenty-four hours?

Mr. Commissioner EXHAM.—Indeed I would not, or for one minute.

Mr. *M'Laughlin.*—But surely, to use Mr. Newton's own expression, I think Mr. Newton has betrayed himself unconsciously into the position of not being governed by that judicially expounded law, and I think that is dangerous; and I think it is vitally important for me to discover whether the other magistrates are under the same dangerous delusion.

Mr. Commissioner EXHAM.—Very well.

4240. Mr. *M'Laughlin.*—Now, what is your view of the law with regard to drumming parties—I give the words of Mr. Commissioner Coffey—?

Mr. Commissioner COFFEY.—I did not say that; I said you were entitled to ask this gentleman whether he agreed in the view of the law as laid down by Lord Chancellor Brewster, or Baron Bramwell (that is, I believe, the English judge referred to)—whether he agrees with, and adopts that. You are entitled to ask that.

Mr. *M'Laughlin.*—Very well.

4241. (To witness).—Do you agree with the law as laid down by Lord Chancellor Brewster, and Baron Bramwell of the English bench, and Lord Chief Justice Monahan, with reference to the drumming parties?—I do not know what Baron Bramwell's law is.

Sergeant *Armstrong.*—He never laid down anything about drumming parties.

4242. Mr. Commissioner COFFEY.—But you are aware of the other two?—Yes.

4243. Lord Chief Justice Monahan's and Lord Chancellor Brewster's?—Yes.

4244. Mr. *M'Laughlin.*—But you have never had

an opportunity of seeing Baron Bramwell's. It occurs at page 53 of the Donaghmore case [Mr. M'Laughlin here read the opinion of Baron Bramwell, quoted in the report of the Donaghmore Commissioners]. Do you agree in that?—In every word of it.

Mr. Commissioner COFFEY.—That is as to a riot, you know.

4245. Mr. M'Laughlin.—Yes, but the name being mentioned it was my business to adopt it. It did not occur to me to quote this at all. Now, tell me whether in your opinion the present law is sufficient to put down these drumming parties?—I think not a drumming party of itself.

4246. What else should there be with it in order to cure the imperfection that would be in a drumming party itself, as regards the susceptibility of being put down?—There should be party music—party emblems—weapons—or firing of shots—or the party so constituted as to create terror to any of Her Majesty's subjects.

4247. And if the party were so constituted as to create terror to any of Her Majesty's subjects, then the absence of fire-arms, or firing of shots, or party tunes would make no difference?—I should think not.

4248. Have you any doubt, having heard the evidence here, that these drumming parties are eminently, pre-eminently, calculated to produce terror—yes or no?—I must ask you to repeat the question.

4249. Have you any doubt, having regard to the evidence given here since the beginning of the inquiry, that these drumming parties are eminently calculated to excite terror?—No; I think they are not calculated generally to excite terror.

4250. Are they particularly so?—I think the evidence goes more to show that they excite annoyance.

4251. Mr. Commissioner COFFEY.—Were you present here when Mr. Heard was examined?—I was sir.

4252. Were you present when most of those witnesses were examined?—I was.

4253. Because I have a distinct impression on my mind—of course I shall have an opportunity of reading the shorthand writer's notes, and correcting any misapprehension I have entertained—but I have strongly on my mind an impression that sworn evidence was given first by the county inspector, Mr. Heard, and next by a large body of the witnesses, that these drumming parties were looked upon and regarded as a direct challenge to another portion of the population to come out and fight; and I am bound to say further that until this inquiry took place the magistrates had no impression that there was so distinct and strong a feeling on the part of the Roman Catholic population as appears now. And they have all sworn that they were not only calculated to create offence and annoyance—one witness said disgust—but to exasperate, irritate, and provoke, and to lead ultimately to the formation of counter drumming parties—

Witness.—Yes sir; but "terror?"—

4254. Sergeant Armstrong.—Does that amount to terror in your judgment?—No sir; none of those would amount to terror in my mind.

Sergeant Armstrong.—I think the Catholics would not admit that they were terrified at all. They would be ashamed to say so.

Mr. Commissioner COFFEY.—"Terror" is only an expression. If it is done to provoke a breach of the peace, if it is done for the purpose of bringing men out to fight, although it shows they are imbued not only with terror but with courage and defiance—

Sergeant Armstrong.—It is equally bad whether terrorism exists or not; but this does not amount to terror.

4255. Mr. Commissioner EXHAM.—Taking the evidence we have, and the fact that counter demonstrations have been got up in other places, and that they were intended to be got up here, and were stopped by the influence of parties, surely is not it certain that these demonstrations are likely to produce danger to the tranquillity and peace of the neighbourhood?—Quite so, sir; but I make a very great difference between that and terror.

4256. Mr. M'Laughlin.—What you mean by terror is making people tremendously afraid, is not it?—I think terror—I may be wrong, but I may be right—terror, when used in that legal sense, means that the whole people, the general people, must be put into a state of terror or fear.

4257. I see. Then if the terror was confined to a particular class it would not come within the terms of your description?—No; I do not mean so at all.

Mr. M'Laughlin.—After that answer I will not pursue that part of the cross-examination.

Mr. Commissioner COFFEY.—I intend to pursue it.

4258. Mr. M'Laughlin.—Of course, in the drawing out of evidence from a witness, if you were sitting as a magistrate, in order to see whether terror or alarm existed, you would have to ask the witnesses whether it did or not. How would you discover it, by the expressions of the witnesses?—Yes.

4259. I think your name is Charles?—Yes.

4260. You are the Mr. Charles Stanley that sat on the occasion of the 10th of May, 1869, when the following facts occurred?—I was.

4261. [Mr. M'Laughlin read a report of the proceedings of the occasion referred to from the *Northern Star* newspaper, in which the following passage occurred:—

"Mr. Moore.—Is the playing of music at any time calculated to produce a breach of the peace in Dungannon?"

"Mr. Cochran objected."

Were you present when the bench ruled that that should not be put?—Yes.

4262. Were you one of those who agreed with Mr. Newton or with the majority?—I have not the slightest recollection of it.

4263. Did you ever hear that you were the first that objected to allowing the question to be put, after the attorney, of course, led off?—No.

4264. Are you prepared to say that you were not?—No.

4265. Very well; have it so. I have no doubt that since you have gone into the commission of the peace you have known neither one party nor the other in the doing of your duty—is that so or is it not?—I endeavour to do so.

4266. You always do that—you make no exceptions—you always do that?—Always.

4267. And always will, I have no doubt, as you say. Do you remember being here in the year 1865?—No.

4268. Were you here in 1865?—I was.

4269. Do you remember the time of the great wrecking?—I do.

4270. The 12th of July, 1865, the great wrecking; the 7th of August, 1865, the night that the two camps within view of each other were firing shots all night—do you remember the circumstance?—No.

4271. Do you remember the portion of the evidence here with regard to that circumstance?—Yes, I remember.

4272. Were not you sitting up there all the time [pointing to one of the galleries of the court]?—You asked me if I remembered the circumstance.

4273. But to identify this particular circumstance as contra-distinguished from other circumstances. Have you any reason to doubt what is stated that the two parties were firing shots all night there?—I have no reason to doubt the evidence that I heard in this court.

4274. Have you any reason to doubt that part of the evidence which says—

Sergeant Armstrong.—I do not recollect any evidence which says they were firing at each other all night. It was all over at an early hour. It will be all taken down here.

Mr. M'Laughlin.—And it is quite a misrecollection of the evidence.

(To witness).—Do you remember that the two parties were firing, were not they?—

4275. Mr. Commissioner COFFEY.—That is, that the evidence represents it so?—Yes.

4276. Mr. M'Laughlin.—And I will ask you to

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believe that they were not firing at themselves. Now, is not it true that of those two parties the only parties whose names were taken down, and who were dealt with with reference to that transaction were the Catholics—is that true?—From what I have heard here.

Sergeant *Armstrong* (to Mr. *M'Laughlin*).—What do you refer to?

4277. Mr. *M'Laughlin*.—Is not it true that for that outrage, in which two parties were concerned, the names only of the Catholics were taken?—

Sergeant *Armstrong*.—What date?

Mr. *M'Laughlin*.—I have already said the 7th of August, 1865.

4278. (To witness).—You were present in court when the police stated that they were occupied in going through and taking the names of the Catholics, and that the Catholics were sent for trial, and that none of the others were. Were you here when that was stated?—Yes.

4279. Are you, as a magistrate, prepared to say that that was fair?—No.

4280. That it was unfair?—No.

Mr. Commissioner *COFFEY*.—No human being could say that it was fair.

4281. Mr. *M'Laughlin*.—Is that your evidence, that it was unfair?—No.

4282. Mr. Commissioner *COFFEY*.—Supposing the transaction to be as represented, namely, that one party came into the neighbourhood, to the foot of the town, and commenced firing shots, and so on, and retreated back to a hill close in the neighbourhood of the town, and remained there a considerable portion of the night like an armed camp, firing shots, and the people of the town under the impression that they were going to be attacked, as they had been a few days previously, on the 12th of July, 1865, prepared for a defence, and fired shots also; would you, as a magistrate, consider it fair to take the names of people gathered for defence, and make them amenable, and to ignore the others?—Certainly not, sir—all parties, both parties.

Mr. Commissioner *COFFEY*.—That is what I understood him to say.

Mr. *M'Laughlin*.—But you have the evidence of your own ears.

Mr. Commissioner *COFFEY*.—Certainly, but it was a misapprehension.

4283. Mr. *M'Laughlin*.—Then, sir, is it your evidence, as a magistrate—and if I speak vigorously to you, I nevertheless do it with the most profound respect, and I think it is right that magistrates should have respect shown to them, particularly before a crowded court like this—is it your opinion that what was done on that night, so far as taking the names of one party, and not those of the other, was unfair?—Well, to answer that question—

4284. Yes or no?

Mr. Commissioner *COFFEY*.—Now, assuming for the present—

Witness.—If both parties were known, sir.

Mr. Commissioner *COFFEY*.—Assume, for argument's sake, that the transaction was as represented.

Witness.—I think that every single individual in both parties should be sent forward.

Mr. *M'Laughlin*.—But the learned commissioner is assuming the truth of what is in evidence, which is the very reverse of that.

Mr. Commissioner *COFFEY*.—And he says it was perfectly unfair, supposing—

Witness.—Exactly, sir.

Mr. Commissioner *EXHAM*.—Supposing that the police had an opportunity of knowing—

Mr. Commissioner *COFFEY*.—But did not look for that opportunity. I do not understand that at all. What I understand is this:—It is not that they did not see the other party, but it was their bounden duty, if the state of facts was as represented, after having taken the names of the parties that were in arms in the town, to have walked out and sent out to the opposite camp, and if afraid to go there have re-

mained in the neighbourhood until they saw those parties, and got their names.

Witness.—That is my opinion, sir.

Mr. Commissioner *EXHAM*.—Do not let it be taken down that I dissent from what Mr. *Coffey* says, because I say it was the duty of the police to have gone out of the town when they heard the shots, as they must have done if the evidence be correct, and to have taken the names as well as they could, and find out who the persons were, and summoned everyone who could be identified in that crowd, as well as the other party; and I say distinctly that it was most partial and unfair of the police to have acted otherwise.

4285. Mr. *M'Laughlin* (to witness).—That being so, and you agreeing with Mr. *Newton* in the very sensible view of magisterial duty defined by him, and adopted by the bench, are you prepared now, on cross-examination, to give me any explanation of that circumstance?—Of what circumstance?

4286. In 1865?—Oh, I was not in the court.

4287. Are you not charged by your commission with the preservation of the peace?—Yes.

4288. Do you not agree with what Mr. *Newton* says as to the duty of magistrates—don't you think you have more interest in it than I have?—No. What is the question?

4289. Don't you think that the occurrence of such a thing is a reflection on the magistracy unless explained?—Certainly.

4290. That being so, are you, as one of the magistrates, and being a magistrate then, now prepared with any explanation, your attention being directed to it within the last few days?—I did not hear it until it was all over.

4291. Did not you hear what has taken place on this inquiry? Are you prepared with any explanation to save the magistracy from the reproach of what was done, assuming that the facts are as stated?

Sergeant *Armstrong*.—I deny that there is any reproach. Mr. *Conlson*, the resident magistrate, took the informations and sent them for trial.

Mr. Commissioner *COFFEY*.—No; that is not so. I recollect, at least I know very well, what did occur from the evidence and documents before me. Unquestionably there was a resident magistrate here at the time living in the town, with the police at his disposal, and all I can say is that if I were the resident magistrate acting in that way, with my notion of what is just and right as regards all Her Majesty's subjects, I would have done right by directing the police to do as I say.

Sergeant *Armstrong*.—Mr. *Coulson* was here specially as the resident magistrate, Mr. *Brooke* was here the local magistrate. They are both dead, and they managed the matter. The other magistrates did not interfere.

Mr. *M'Laughlin*.—A most correct description of what was done—"they managed the matter."

Sergeant *Armstrong*.—Then impeach them.

Mr. *M'Laughlin*.—I should be sorry to tread on the grave of a dead man.

4292. (To witness).—Can you give any explanation?—No.

4293. Have you ever attended any Orange meetings?—I have.

4294. When?—I was at the Killyman meeting.

4295. When was that?—1869. The time Mr. *Johnston* was there.

Sergeant *Armstrong*.—A very proper place for a magistrate to be. Did not know but his services might be required.

4296. Mr. *M'Laughlin*.—Were you ever at an Orange meeting before that at all?—I was at an Orange meeting in Stewartstown some years ago.

4297. What year was that?—The year in which Mr. *Plunkett* was there as resident magistrate.

4298. Now do you think it odd, having regard to those circumstances, that the Catholics have some little doubt about the impartiality of the magistrates in discharging their magisterial duties; having regard to those circumstances do you think it a natural feeling

to prevail?—Well, I should certainly say if I went there as an Orangeman, and one of the party, that it would not.

4299. But you are not an Orangeman?—No; but if I had gone as one of the party they would have a right to question my partiality.

4300. In what capacity did you go?—I went as a sight-seer. I went with strangers, ladies, on both occasions, some from Scotland and some from elsewhere.

4301. Do you think that was an unhappy expression you used about the breaking of the chapel windows?—I think it has created unpleasantness which it should not have created.

4302. You think that the people who took offence were wrong?—I think if they understood all that was said at the time they could not have taken offence.

Mr. Commissioner COFFEY.—I am certainly bound to say that Mr. Stanley's explanation has, in the fullest manner, satisfied me that the impression they conceived was entirely an erroneous one, and if I had been a magistrate acting on that occasion I would have taken exactly the same course, and for this reason. It was not the duty of the magistrates to enter into a private investigation and inquire behind the backs of parties who were then under summons to appear, because they were afterwards to act as judges in the case; and being parties to an investigation behind these men's backs would be against the first plain principles of justice. But it was the duty of the police independently of the magistrates to act. It was their special duty to make inquiries themselves with the means at their disposal, and having got and elicited all the information they could, to have laid it before the magistrates to say whether it was a case for issuing summonses against the parties. I am glad that an opportunity has been afforded to give this explanation, because there is no person but can see that if Mr. Stanley used the expression that it was a trifling offence to break panes of glass in the windows of a place of worship, it was a very indiscreet and improper expression, and more particularly in a place like this, which appears to me to be the hot-bed of angry passion.

Witness.—I must thank you, sir, for explaining my views perfectly as I meant them.

4303. Mr. *M'Laughlin*.—Is not it odd that such eminence was given to this matter in the magisterial defence sent to the Castle—is not it odd that both Mr. Newton and some other gentlemen took strong offence at it at the moment?—I think they could not have understood the reason or purport with which it was said; and I say also that if it was said with the meaning that you wish to put to it it was highly reprehensible.

Mr. Commissioner EXHAM.—Any bystander could have taken Mr. Stanley's observation in the sense in which others did take it there is no doubt.

Mr. Commissioner COFFEY.—There is no doubt it was quite susceptible of the meaning that he regarded it, as a petty trivial matter, not worth going into the consideration of.

Mr. Commissioner EXHAM.—And the very fact that two of the magistrates did take it in that way illustrates that.

Mr. Commissioner COFFEY.—And perfectly exonerates those who were offended with Mr. Stanley.

Mr. Commissioner EXHAM.—I am only saying it is not at all unreasonable to suppose that the bystanders, who were not at all in the position of the gentlemen on the bench, would understand it in the way in which Mr. Newton and Mr. Richardson (the other gentleman, I think) did.

Mr. *M'Laughlin*.—It is most desirable, I readily admit, and it is only the smallest quantum of fair play to let the gentleman explain it; but still I have a right to show the exact character of it.

4304. (To witness).—Was attention drawn in the newspaper to your having said it?—Yes.

4305. Did you take any steps to correct that impression in the newspaper?—No.

4306. Do you intend now to put down those drumming parties?—I intend to administer the law to the best of my ability in any case that comes before me.

4307. Do you intend to make any change in the mode of proceeding with reference to the drumming parties as compared with the mode of proceeding for the last three years?—I do not intend to make any change in the administration of the law, as I have been to the best of my ability carrying it out.

Re-examined by Sergeant *Armstrong*.

4308. You were asked were you aware that a great deal was made in the letter of the magistrates to the Castle about the word "trivial." Are you aware that one of the charges in the memorial is, that "one local magistrate, Mr. Stanley, when the breaking of the Chapel window was mentioned to the bench, declared publicly that he would have nothing to do with any such investigation, as he considered it a 'trivial offence'—you knew that was in the memorial?—Yes.

4309. And therefore it was replied to and explained as you have explained it here. You do not recollect whether you were in court or on the bench at all the day that discussion arose about admitting the question?—I know that it occurred when I was on the bench, but I have not the slightest recollection.

4310. It appears from the book that Mr. Moloney was here—Mr. Moloney, Mr. Newton, and yourself—and you do not recollect how you were divided?—No.

4311. You do not recollect anything about it. But, assuming it to have occurred, in saying what you did, did you exercise the best of your judgment?—I did.

4312. And did you hear any argument offered by Mr. Cochrane on the one side, and somebody else on the other?—I did.

4313. And you gave an honest decision to the best of your judgment?—I did.

4314. Mr. Commissioner EXHAM.—How far from Dungannon is your residence?—Four miles.

4315. Had you any intimation or suspicion that this demonstration was to take place—attack would be the proper expression to make use of—on the 7th of August, 1865?—Not the slightest.

4316. And were you in the town on the night or evening that that took place?—I do not think I heard of it for two days or so.

4317. And you were not in the town the night it occurred?—No.

4318. You were asked about whether you intended to make any change, so far as you are yourself personally concerned, in the administration of the law as hitherto carried on with respect to those drumming parties. Have you carried out the law as you believed honestly—have you endeavoured to administer it honestly whenever those drumming cases were brought before you?—I have.

4319. Do you think the law at present is not sufficient to enable the magistrates to put down, and put a stop to them?—Not, certainly, sufficient to put down ordinary drumming parties, but certain circumstances might arise which the present law is quite sufficient to meet.

4320. Would it be desirable for the peace of this district, that the fullest power should be given by law to magistrates for the purpose of putting down all drumming parties?—Clearly.

4321. By a summary jurisdiction?—Certainly.

4322. That is, just as you give summary jurisdiction to the magistrates to punish by fine or imprisonment all persons wilfully obstructing the public roads?—Quite so.

4323. You would give a longer term of imprisonment and larger fine in the case of persons engaged in those drumming parties?—Yes.

4324. Irrespective of the locality and of the consequences likely to follow from them at all?—Yes.

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Chas. Stanley,
esq., J.P.

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Thomas
Hamilton, esq.,
J.P.*Thomas Hamilton, esq., J.P., sworn; examined by Sergeant Armstrong.*

4325. How long have you been a magistrate?—About twelve years—nearly twelve years.

4326. And you have been occasionally an attendant on the bench at petty sessions?—I have.

4327. Do you recollect the decision upon which you read the opinion of the law adviser from the bench?—I do; yes, distinctly.

4328. I do not know whether it was on the bench where their lordships now are or in the chamber?—Oh, no; I think it was in the inner room. The Court-house was under repair at the time.

4329. And the business was conducted in the inner room?—Yes, it was.

4330. Owing to the occupation of this court by tradesmen?—Yes.

4331. Do you recollect the fact that you read that?—Perfectly; distinctly.

4332. Was there any arrangement or understanding of any sort between you and any brother magistrate, or any combination of them, that it should be deferred to a certain period of the day, or any prearrangement as to when it should be read?—There was not a word on the subject.

4333. Did you read it at the time that it occurred to you was a convenient and proper time to read it?—I really have a recollection that it was handed to me at the close of the business. I do not think it was handed to me till then.

4334. Who handed it to you?—I could not state distinctly, but I have a distinct recollection on the subject of a very long discussion of the opinion before the business began at all.

4335. Had you any object in postponing the reading of it?—Oh, dear, no; I read it at the very moment that I was asked.

4336. Was there any scheme or arrangement to cushion it in any way, or present it to the fewest number of people?—Nothing of the kind.

4337. Were there a great many of the public attending there at the time?—Well, the room was full. It was not a large room, but it was full.

4338. Had you any object or design in keeping it back, or preventing its full promulgation?—Not the smallest.

Cross-examined by Mr. Barry.

4339. With regard to the period of reading that, Captain Ball has sworn that it was at the close of the proceedings that it was read. You have no recollection of the facts to enable you to say that that was not so?—I have a distinct recollection of the fact, that it was so far at the close of the proceedings that it was after the last case was ruled, and before the book was gned.

4340. It was not by Captain Ball it was handed to you?—Well, I could not say with distinctness whether it was he or some of the other magistrates handed it to me.

Mr. Barry.—Captain Ball's recollection is, that he handed it to Mr. Newton at the commencement of the proceedings, and that you read it at the close.

Mr. Commissioner COFFEY.—There is really no importance in it, for this reason, that if Captain Ball thought it desirable that it should be read in the middle of the proceedings, or before the proceedings commenced, he ought to have asked the magistrates to do so.

Mr. Barry.—Of course. I attach no importance to it.

Mr. Commissioner EXHAM.—According to Mr. Hamilton's recollection the room was full.

Cross-examined by Mr. McLaughlin.

4341. How long do you say you are appointed?—For nearly twelve years.

I do not observe the Sergeant asked you anything about drumming parties.

Sergeant Armstrong.—I do not intend. I men-

tioned to my learned friend I would leave that to him.

4342. Mr. McLaughlin.—Are you in favour of putting those things down?—I am, decidedly.

4343. But you think the law is not strong enough?—I think so at present.

4344. And you honestly think that the body of law supplied by the charge of Chief Justice Monahan, and the opinions of Lord Chancellor Brewster, and the law adviser, still fall short of what is wanted?—You know a layman ought to have diffidence in giving an opinion when you mention such great names, but to judge from common sense, and from practice of the cases, hearing of the cases we send, and no result from them, I think there is a want in the law at present.

4345. Did you ever hear that the wisest course for a man to take when he knew nothing about a subject, was to follow the opinions of those who did?—Still, I never would abdicate my common sense.

4346. But it might abdicate you?—True.

4347. Do you not think that the direction given by the law adviser would be sufficient—that it refers to a body of law sufficient to enable you to do that which you are so very anxious to do?—I do not think it is.

4348. And you are very anxious to put down the drumming parties?—I would decidedly wish every political demonstration of every character in this country to be put down.

4349. Are you in earnest?—Yes.

4350. In all parts of Ireland?—In all parts of Ireland.

4351. And you would not think it fair to confine it to one district more than another?—Certainly not.

4352. You would not agree with Mr. Courtney Newton, that you might have it on one side of a hedge, and not on the other?—Mr. Courtney Newton did not convey that to my mind.

4353. You are not in favour of parcelling out in districts, and allowing them to walk on one side, and not on another?—No.

Mr. Commissioner EXHAM.—I do not think he stated that.

Mr. McLaughlin.—In his letter of 4th August, it is written, and the thing would not enter the head of any other man but himself.

4354. To Witness.—You would not have one law for the north, and another for the south?—Yes; I would not.

4355. You have made up your mind upon that?—Well, as a matter of fact, I do not think it is likely. I cannot say.

4356. Would you be in favour of putting down all political demonstrations?—I would.

4357. That is, anything that would have a tendency to endanger the public peace?—Yes.

4358. Whether they were meetings of Catholics—I mean offensive meetings of Catholics—drumming and the like?—We will say Fenians.

4359. I believe some of the Fenians are not Catholics, though the rank and file are?—No doubt of it.

4360. Those Fenians, who are as great public enemies as the Orangemen, you would put them down certainly?—Well, I would endeavour.

4361. And I think you would succeed too. You would get on better with them. Is your Christian name Thomas?—It is.

4362. Did you ever attend any Orange meetings yourself?—I did, several.

4363. I was not prepared for that, having regard to your anxiety to put them down?—Well, I attended one at Robinson's hill.

4364. Where is that?—Close to Killyman. I attended two at Tannamore.

4365. Where is that?—It is about four or five miles from this. And I think that is all, to the best of my recollection.

4366. That is all lately?—I never attended any until within the last five or six years, of any kind.

4367. And since that you have been pretty constant in your attendance?—No; I have attended those three, and I think I did not attend a fourth, but won't swear.

4368. Were you on the platform?—On one occasion I was, but not on the others.

4369. That is the Killyman occasion?—Yes. No; I beg your pardon; I think I made a mistake. I was on the platform the day the meeting was held there to protest against the Church Bill. I rather think I was not there at the Orange meeting. I was not.

4370. Was there not a second meeting at Killyman?—I was there on two occasions of Orange meetings.

4371. Were you on the platform that day?—To the best of my recollection I was not.

4372. You were not far off?—I was underneath it, and walking about.

4373. Now I just want to know this from you. You would not include within the scope of your general denunciation of political meetings a political meeting like that?—Not within a private gentleman's demesne, certainly. I ought to have added to what I said before, political demonstrations on public roads.

4374. That is the limitation that carries you clear?—Yes.

4375. Now what was the last Orange meeting you attended?—Well, I think the last was the opening of the Orange Hall. I do not call that altogether an Orange meeting. That is a private house on private grounds.

4376. But is it not a fact that you have the strongest possible feeling on that point?—On the bench I have no feelings of any kind.

4377. But in your private capacity have not you very strong feelings on that head?—Well, no; I would not call them very strong.

4378. But strike out the "very," and say I was right?—I admire the loyalty of the Orange body.

4379. Then we will leave you so. Are you an Orangeman yourself?—I am not.

4380. But you have a sympathy for the brethren. Now having regard to these facts, are you surprised to find that the local Catholic population here have not, as they say they have not, any confidence in the administration of the law by you in party cases?—Well, I really can say that I was surprised to find that the feeling existed, for I did not think it existed.

4381. You were surprised to find that the feeling existed?—I was.

4382. Now that you have time to think over it, and consider that they also have eyes and ears, and thoughts and feelings, do you think it very natural that they should have that notion?—It is very difficult to know what passes in other people's minds. I think if I saw every decision fairly given according to the evidence, I should not be reasonable in saying that there was unfairness.

4383. You think every decision was given according to the evidence, and therefore it is unreasonable for them not to have the fullest confidence in the law administered by gentlemen who attend Orange meetings, when they sit on the bench?—That is my view.

4384. You are twelve years a magistrate?—Yes, nearly twelve years.

4385. 1865 would be within the limits?—Yes.

4386. You were present in court on the first day of the inquiry?—I was, every day.

4387. Do you remember the occasion of the 7th of August when the two parties were pelting at each other, firing shots, on the 7th of August?—Do you mean do I remember the evidence?

4388. Just so?—Yes.

4389. And I suppose we may assume for argument's sake that the fact was as represented in the evidence here, that nobody was arrested on the other side?—It was sworn to, but to tell you the truth I know nothing about that except from the evidence. I was in Switzerland at the time, and know nothing except as represented.

4390. How long afterwards was it that you came back?—I came back some time in August.

4391. This happened in August?—It did; I heard it stated that it happened on the 7th of August, but I do not know that of my own knowledge.

4392. Do you agree with Mr. Newton and Mr. Stanley in believing that when an affair of that kind occurs, and that one party is made amenable and the other not, it is the business of the local magistracy to make some inquiries?—Well, of course it is; not the least doubt of it.

4393. Do you consider it fair, assuming the evidence proved that to be correct, that one party were returned for trial and the other not—do you consider that fair?—If the police had a perfect opportunity—but I will give no opinion as to whether they had an opportunity or not—if they had a perfect opportunity of taking the names of both parties, they neglected their duty. But I will not give an opinion of that.

4394. But is not that your business?—I give no opinion as to whether the police did their duty or not.

4395. No; but suppose the same thing occurred to-morrow, and that upon inquiry afterwards you discovered it, would you think it your duty as a magistrate to see how such foul play had been done, and by whom?—Well, not in Dungannon, for I live about four miles away.

4396. Could you not drive in and ask?—I did not conceive it my business, with a number of magistrates about Dungannon at that time.

4397. What would be your idea of an opportunity for the police to take the names of the parties? Do you think they should show themselves to the police or that the police should go to them?—I think it would be better for the police to go to them.

4398. Do you think a body of men, armed with swords and bayonets, or whatever they may be, would be able, having regard now to the fact that they took the names of one of the firing parties, to go and take names of the other firing party?—It would altogether depend on circumstances. If the body of men that they were watching was very large and well armed, they did their duty if they took the names of them. But it might occur, if they left them there, and went off to another hill to take the names of others, that these might get round some other way, and they would do far more harm than all.

4399. Don't you think that the people close to the town would be the less likely to do harm?—I cannot tell you.

Mr. Commissioner COFFEY.—It was unfortunate that this transaction was not investigated immediately after the occurrence, because we are unfortunately dealing with the acts of magistrates who are dead, one of whom was resident magistrate.

4400. (To witness.)—Don't you think that a matter of that sort, supposing it existed, according to the evidence, was calculated in the highest degree to exasperate?—It was.

4401. And produce the strongest feeling that there was not justice and fair play?—Well, I would not go so far as that.

4402. Well, I would, every bit of it?—Oh no, not at all.

4403. Assuming the evidence to be correct?—Even so, there are other circumstances that appear to me to enter into the question, as to the power of the police to take the second names, that have not been touched upon.

4404. I am assuming that there is a body of police here under the authority and control of the magistrates. Here is the whole town thrown into terror in consequence of a gross outrage and wrecking of houses a few days before. Similar noises to those that heralded in that wasting and wrecking of houses occur at night and the whole populace are alarmed and they get into an attitude of resistance; and on a hill within a stone's throw of the town there is a camp formed and shots are fired there during the night. Now, do you think as a magistrate that instant means should not be taken to identify those people and ascertain who they were?—Provided the force at their disposal was sufficient. That I have no means of giving an opinion about. I do not know whether it was or not; but

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provided the force at their disposal was sufficient it ought to be done.

4405. But supposing it was considered a prudent or a proper thing to send one party for trial and let the other party remain completely unidentified, would you feel that was wrong?—Well, I would feel it was wrong, but I would not answer for Mr. Coulson and Mr. Brooke, two men who cannot speak for themselves.

Mr. Commissioner COFFEY.—I should be sorry to think that anything that was done by those gentlemen would be unfair, and on the contrary my private conviction is that no person in the position of a resident magistrate or in the position of a gentleman imbued with a spirit of fair play and justice could have dreamt of the doing of such a thing as that deliberately. Unfortunately we are dealing with the conduct of persons who cannot here answer for them; but I want to have from the magistrates here what their view of that transaction would have been supposing the evidence to remain uncontradicted as it now stands. It is of the greatest consequence that their deliberate opinion should be expressed here.

Re-examined by Sergeant Armstrong.

4406. You returned in August?—I went in the early part of July and came home sometime in August.

4407. Was your attention pointedly called to this on your return home?—Oh no; it might have been a fortnight after I came home that I heard of it.

Mr. Commissioner COFFEY.—He has nothing to say to it.

Sergeant Armstrong.—Nor anybody here either.

Mr. M'Laughlin.—Every man who was a magistrate at the time has.

4408. Sergeant Armstrong (to witness).—Is it your opinion that if the police were in sufficient numbers to identify the Protestant party as well as the Catholics they should have done so?—Yes.

4409. Is it your opinion that if they did the magistrates would have acted on it?—Yes, and I should have been one of them and have done so myself to the best of my ability.

4410. Mr. Coulson and Mr. Brooke were here?—Yes, and no more energetic men could be.

4411. And do you consider it a little unreasonable that this should be investigated six years after the occurrence?—Yes.

4412. Mr. Commissioner EXHAM.—Are you aware that he was sent here on special duty at the time?—Well, not of my own knowledge. I was away at the time.

4413. Is it your opinion that the existing law is sufficient to stop all drumming parties?—Well, I do not think it is.

Mr. M'Laughlin.—I understand there is a mistake in supposing Mr. Coulson was here. He was not here on that night at all.

Sergeant Armstrong.—He came the next day to take up the matter and take informations.

Mr. Commissioner COFFEY.—The statement is, that Mr. Coulson the next morning, acting by himself, without the intervention of the other magistrates took the informations against those parties that had been engaged the previous night.

Mr. Commissioner EXHAM.—It does not yet appear how Mr. Coulson was communicated with, or whether he was in town the night it occurred or telegraphed to, to be here the next morning.

Mr. Commissioner COFFEY.—I quite agree with the Sergeant that it is inconvenient to go back to this transaction for five or six years; but still the statement being there, on public record, and these charges being distinctly and deliberately made in the memorial, we must give the best account of it and explanation of it we can.

Mr. Commissioner EXHAM.—It does seem strange when Mr. Coulson did come here that he did not communicate with some of the magistrates on the spot.

Mr. Commissioner COFFEY.—My astonishment is that there was not a memorial got up by the inhabitants of the town who felt aggrieved by that proceeding, and brought before the magistrates, and then, if they got no redress, sent on to the Government.

Mr. M'Laughlin.—It is already in evidence that there was a memorial and it fell through after the assizes came on. Observe the position of the Catholics. There were twenty of them like rats in a trap, to be tried, and not a step further could be got without the precedent sacrifice of those twenty; and I say now as I said before (though any man will distrust his own judgment at times), now that I have had time to think about it, that if the occasion occurred to-morrow I would do over again what I did then.

Mr. Commissioner COFFEY.—Are the executive Government to blame for a transaction that never was brought under their notice? And secondly, the complaint is now made against the acts of two persons who are in their graves and who probably might have been able to explain in the most satisfactory way their conduct and their acts.

Mr. M'Laughlin.—That covers a great deal of possibility; but, pardon me, Mr. Commissioner Coffey, it is not pretended that the police who were there are in their graves. We have made a *prima facie* case. Let the police explain.

Mr. Commissioner COFFEY.—There was an investigation into the conduct of the police before. Get up another memorial and you will be answered that you did not choose to do this before and you bring it on now when the two men who were answerable are in their graves.

Mr. M'Laughlin.—In the position that I am placed in, and in the position that Mr. M'Mordie is placed in here, we should be guilty of a grave and inexcusable dereliction of duty if we failed to put these facts before the Commission.

Mr. Commissioner COFFEY.—I cannot blame you. I have, in the discharge of my duty, felt impelled to make some strong observations on this matter; but I should not like this to appear in a report going before the public, that I did not fully appreciate the difficulty of the matter, in consequence of the remoteness of the transaction, and the death of the persons *prima facie* liable for it.

Mr. M'Laughlin.—It is important to show that the local magistrates do not look upon it in the same light that I do.

Mr. Commissioner COFFEY.—Up to the present moment there has been no gentleman examined who does not say that if the evidence be true, he regards it as unfair and unjustifiable.

Mr. M'Laughlin.—The fact remains that the two parties were acting lawlessly, and that the police went round and took the names of the one, and did not take the names of the other.

Sergeant Armstrong.—What have we to do with that?

Mr. Commissioner COFFEY.—*Prima facie* you have made out a case which, if the materials were here, fresh, to have answered, and it was not answered, was wholly unjustifiable. It was an abuse of the trust reposed in those gentlemen who were there that night, if they so acted, and we may express ourselves very strongly in reference to it; but at the same time common sense and justice and fairness require us to modify that by pointing out the difficulty of an answer being given, in consequence of the remoteness of the transaction, and the death of the two persons who are primarily liable for it.

Sergeant Armstrong.—Permit me to remind you that on the inquiry held by Mr. Shaw and another commissioner in reference to a subsequent transaction there was not a word about this transaction of 1865.

Mr. M'Laughlin.—The Sergeant is totally and absolutely mistaken. As I am informed by Mr. M'Mordie, whatever effort was made to get it out was stopped by this, that the commissioners on the inquiry in 1866 utterly refused to go into anything except the proceedings of the magistrates on the particular petty sessions day to which their particular warrant was directed.

Sergeant Armstrong.—So I say; it was not made the subject of complaint to the Lord Lieutenant at all.

Mr. M'Laughlin.—That is different from saying that there was another commission afterwards, and we were as mild as so many mice.

Mr. Commissioner EXHAM.—Even in the memorial there is no reference to this transaction.

Mr. *McLaughlin*.—If there were, there would have been no need for a bill of particulars, and there it is in black and white.

Mr. Commissioner EXHAM.—The charge here is against the present magistrates. They are the magistrates who called for the inquiry, and we are directed to inquire into the matter, not only the subject of the complaint of Captain Ball, which can only, so far as Captain Ball is concerned, commence on the 3rd of September, 1869, when he came here, but also the further matter mentioned there against the existing local magistrates, the present local magistrates. I cannot help thinking that if you had sent forward a memorial to the Lord Lieutenant now, asking for an inquiry into the conduct, in 1865, of men who are now both dead, neither Mr. Coffey nor I would be sitting here now inquiring into it.

Mr. *McLaughlin*.—Is it the opinion of the Commissioners that this is a matter with which the magistrates that are living in the locality have nothing to do?

Mr. Commissioner EXHAM.—Not at all; if they were present, or if these present gentlemen were parties in any way—if any of the present magistrates now living were in any way parties to what took place that night, and that by their connivance or suggestion or abstaining from doing their duty, they were implicated in the sending forward of one of the parties for trial, and not the other, I, for one, would most unhesitatingly say their conduct was very improper indeed. We have not yet heard—it may come out—how it was Mr. Coulson was the resident magistrate who was sent here to investigate the matter.

Mr. *McLaughlin*.—Here are in the memorial these words:—"On many occasions breaches of the peace have been committed by these drumming parties." There could be nothing more universal or unlimited, in point of time, than the words of the memorial. The point of the Sergeant that they did not attempt to utilize the occurring of the next commission is met by this, that the Commissioners refused absolutely to allow them to go one inch beyond the day they were especially inquiring about.

Sergeant *Armstrong*.—Because it was not complained of in the memorial to the Lord Lieutenant.

Mr. *McLaughlin*.—Now, after this commission has been in progress six days, it is rather late to discover this.

Mr. Commissioner COFFEY.—There is no discovery

at all, and I think it was I who brought on this discussion, because I did make some observations on the matter, which I thought the facts, as they then stood, warranted me in making; but as I had made those strong observations, and as we are not in your case at all, but in the case of the gentlemen who are now being examined, I availed myself of the opportunity of qualifying and modifying those observations by pointing out the enormous difficulty of arriving at anything like a just and fair conclusion, the transaction being remote, and the two persons primarily liable—Mr. Coulson and Mr. Brooke—being in their graves; and it would be a monstrous thing if we were to come to the conclusion that this thing was not capable of explanation because those gentlemen can throw no light upon it.

Mr. *McLaughlin*.—Mr. Commissioner Coffey is answering an argument that I never addressed to the Court. There is not a word he expressed that I do not entirely concur with. I can only say that I know of no other way of getting out the facts than the way I am taking; for the death of those gentlemen creates a difficulty in my way too.

Mr. Commissioner COFFEY.—We are not preventing you.

4414. Mr. Commissioner EXHAM (to witness).—Is it your opinion that the magistrates should be clothed with power by law to put a stop to all these drumming parties?—It is.

4415. And would you think it advisable as a magistrate, from your knowledge of what has taken place here, that there should be some summary powers given similar to those in that act that was referred to by the law adviser for summoning the parties, and giving summary jurisdiction to the magistrates in the case of all those drumming parties?—I do not put it in that form. I think summary jurisdiction in which there was no doubt, would put a great many difficulties out of our way.

4416. And you have no doubt that those drumming parties are in this district eminently calculated to cause breaches of the peace?—Oh, there is not the least doubt about that—they are.

Sergeant *Armstrong*.—Now, gentlemen, I was very anxious to call Mr. Lyle this evening, in order that he might have an opportunity of making a statement in answer to his friend's (Mr. O'Neill's) representations; but I am afraid it would be keeping you to an unreasonable hour.

Adjourned.

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Hamilton, esq.
J.P.

SEVENTH DAY.—AUGUST 23, 1871.

Mr. Commissioner EXHAM.—Before Mr. Lyle comes to the box, we wish to ask Mr. Newton a few questions. Sergeant *Armstrong*.—Very well.

Courtney Newton, esq., J.P., was then examined by Commissioner EXHAM.

4417. Mr. Newton, I want to know this. Carry your memory back to March, '70, do you recollect at that time drawing up or giving to Captain Ball a memorandum stating the opinion of the magistrates with respect to drumming parties, in order that it should be sent up to the Castle?—Yes; I do.

4418. Look at that, and see if you are able to tell us if it is a copy of what you sent up, or caused to be sent up?—Yes. I think that in substance is a correct copy (examines document).

4419. Do you recollect was this drawn up by the magistrates in order to obtain the law adviser's opinion before his memorandum, or the memorandum that he had sent down, was read from the bench?—There was no law adviser's opinion with respect to the subject to which that letter refers. It was a letter Captain Ball wrote from conversations that he and I had. He wrote for the opinion which the law adviser had given on the Newry case as I recollect. And in the reply that he got, it was suggested that it should be read

from the bench. It had not reference to any particular case. Captain Ball brought that to the magistrates to read; we discussed it as well as we could. I believe—I am not quite certain of this, but I believe Captain Ball and I walked up the street afterwards—that is, after petty sessions was over—that we conversed over the subject, and that I said to him (I was not directed by the magistrates, it was a mere accident) "Now, for goodness sake, give the magistrates' own views on the subject, and let the law adviser put us right, if we are wrong." He said, "Will you give me a memorandum of it?" I went into my office. My clerk writes shorthand, and I dictated to him on the spot the memorandum; but I began to think I would like to keep a copy of it, so as to be able to refer to it, and I wrote it in my own handwriting at the commencement—"My dear Captain Ball," so as to turn it into a letter, which I did. That is the whole transaction.

4420. Now, do you recollect afterwards any answer

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that coming down after it went to the Castle?—I don't remember. I never heard of any opinion with respect to that memorandum, except the one which it was said should be read from the bench, which we did.

4421. Was not this mentioned to you :—

"I have read the observations of the Dungannon bench. I collect from these, that they feel that a breach of the peace is likely to ensue if these drumming parties are suffered to continue. It is not necessary in order to make the assembly an illegal one that party tuncs should be played. The magistrates will find the law correctly stated in the minute to which they refer in their observations, and I recommend them to pursue the course there indicated, to prevent the breach of the peace, which, it appears, is anticipated if the present state of things is allowed to continue.

"WILLIAM M. JOHNSTON."

Do you recollect that?—I have not the slightest recollection of hearing that. I have no recollection of it. I will not swear it was not read, but I am sure it would have impressed itself on my memory.

4422. I am anxious you should recollect whether that was not brought to you or brought to the magistrates by Captain Ball—the memorandum I have now read to you, besides the one on the Newry case. It is headed "Copy Law Adviser's Opinion, 7th December, '69." You recollect that?—That was the original document Captain Ball got.

4423. But don't you recollect him bringing the document, or a copy of it?

Mr. Commissioner COFFEY.—Which is an answer to your little memorandum?

Witness.—I don't believe I ever saw or heard. I will not say it might not be done if Captain Ball ever read it.

Mr. Commissioner EXHAM.—This is the original document in Mr. Johnston's handwriting. We got down all the files from the Castle this morning.

Sergeant Armstrong.—Of course the supposition is it was once here, and went back to the Castle, from which it now comes.

Mr. Commissioner EXHAM.—No doubt about it.

Witness.—I don't know. Captain Ball never said

Sergeant Armstrong.—That is the supposition.

Mr. Commissioner EXHAM.—There is no doubt about it. We have this memorandum to Captain Ball—"The annexed opinion of the law adviser, transmitted for the information and guidance"—with the reference that it would be well to follow the example of the Newry bench, and that is signed by Mr. Burke, the Under-Secretary.

Sergeant Armstrong.—Does it appear that this communication was through Captain Ball?

Mr. Commissioner EXHAM.—Of course.

Sergeant Armstrong.—He would be the proper person to have it.

4424. Mr. Commissioner EXHAM.—We want to know in the first instance if this was read by Captain Ball for the information of the magistrates. The Under-Secretary says to Captain Ball, "It would be well to follow the example of the Newry bench," and he sends it forward for their information and guidance. (To witness).—Now I want to ask you about the transaction of April, '70. Do you recollect a complaint brought forward by Head-Constable Stewart and Constable Lynch? I believe the depositions as they are framed were taken down by you?—Well, practically so. It was my clerk.

4425. Were you here the other day when M'Parland, one of the constabulary, said that Sub-Constable Lynch stated that he was afraid, and that he (M'Parland) interrupted him at the moment?—Yes.

4426. That he interrupted him at the moment, and he said he was not afraid?—Yes.

4427. Do you recollect that occurring?—It is my impression that it did occur.

We have been looking through the informations. I don't find one word of that stated in the informations of Lynch. On the contrary, I see the three of them indorse the statement of Head-Constable Stewart that in the apprehension of no reasonable man it was

calculated to inspire terror; and further on he says, notwithstanding that, if they had met an opposing party, he had not the slightest doubt there would be a breach of the peace.

Mr. Commissioner COFFEY.—A material part of this matter is this. There is the specific unqualified statement of the law adviser's opinion, which I take leave to say no lawyer in the land can dispute or doubt, that it is not necessary to wait until two hostile parties are face to face, and about to close with each other, to bring them within the law. It is quite enough if parties are under apprehension as reasonable men that a breach of the peace is likely to occur in the event of their meeting with an opposing party. It is not necessary to wait until they meet the opposing party, and, if it is any satisfaction, that is the opinion of the late Lord Chancellor Brewster. It is the opinion of the present Chief Justice of the Common Pleas. It is the opinion of every Judge in England, and the opinion of every lawyer in Ireland.

Mr. Commissioner EXHAM.—It is not to be left to the accident of whether an opposing party will come out or not; it may be too late then to stop a fight.

Witness.—I think you did not read this in the informations—"When the crowd huzzaed, Sub-Constable Lynch said he was afraid."

Mr. Commissioner EXHAM.—I did not see that.

Witness.—"Constables M'Parland and Clarke said they were not afraid."

Mr. Commissioner EXHAM.—This is really a point of some moment. Constable Stewart says, as a reasonable man, I did not see anything calculated to excite terror or alarm or to produce danger to the tranquillity and peace of the neighbourhood, or to lead to a breach of the peace. My reason is, that since I came to the neighbourhood I observed these drumming parties frequently, and I never knew any disturbance to arise from them. In my opinion, if there had been an opposing party on the road, there would be danger of a collision, but I saw nothing in the party to produce such collision. Now, that comes to this—

Witness.—All I can say is, that was put before the law advisers of the Crown, and what do they do? Do they order these people to be sent for trial? If they don't what have we to do?

Sergeant Armstrong.—There is no such thing as an announcement that would leave no doubt. The whole thing is still left in that enigmatical way.

Mr. Commissioner COFFEY.—Let us have no mistake upon the matter.

Sergeant Armstrong.—Your opinion, based upon common sense, makes your declaration a very important one. There is no doubt of it.

Witness.—And it weighs with me very much. I have been thinking ever since over what the Commissioners have said.

Mr. Commissioner COFFEY.—The public interest is largely involved in this, and the magistrates should not be under any mistake as to the law.

Sergeant Armstrong.—Nothing can be more desirable than that they should not.

Mr. Commissioner COFFEY.—What I observe upon this information is this, that it is left in doubt—and there is the opinion of one constable against the opinion of another constable in it—and no safe or prudent man, having this information before him, would direct a prosecution when the witnesses themselves differ. As a matter of mere prudence I think it was a right and proper thing for the law adviser, under the particular circumstances of this case, to recommend no further action; but if this case had been in the hands of a professional man, or if the magistrates themselves had no doubt of what the law was, it was open—as it has been ever since the common law of England was established—for the magistrates to have asked the simple question of the witness—"Although you yourself were not afraid, do you think the exhibition of that party, with that drumming and shouting, was calculated to produce a breach of the peace if a hostile party came in contact with them?" And no human being can doubt, on the evidence that has been given

here—evidence of magistrates, policemen, and civilians—that the answer would have been “Yes,” and if that answer had been in the information, the law adviser would have directed those parties to be made amenable.

Witness.—I may take the liberty of saying, in defence of the magistrates, as the magistrates who took that information, that we sent them up honestly, for the purpose of getting the opinion of the law adviser. I shall just read this part of the information. This is the evidence of Head-Constable Stewart:—

“I returned to Dungannon, directing Constable Lynch, Sub-Constables Clarke and M’Parland to go further on; did not see any occurrence in the slightest degree likely to produce a breach of the peace with the party. I saw no party emblems with the party. As a reasonable man, I did not see anything calculated to excite terror or alarm or produce danger to the tranquillity or peace of the neighbourhood, and lead to a breach of the peace.”

And then this further statement by the witness to the law adviser of the Crown:—

“In my opinion, if an opposing drumming party had been on the road there would have been danger of a collision, but I saw nothing in the party to produce such collision. Several times I requested the party to go back and leave the drums, but they would not.”

The next thing I ask liberty to read is (and this was sent to the Crown too) the evidence of Constable Lynch, who swore he was afraid and something more besides, for there were stones thrown—and the evidence of the other sub-constables.

“We went with Head-Constable Stewart as far as the turn to Killyman. If no opposing party met them the party with the drums did nothing to provoke a breach of the peace, and we concur in the definition of Head-Constable Stewart on this point. We went after the party until they went into the graveyard. We stopped at the gate. On the road two other men calling themselves Fenians and Wilson and several others not known to us beat the drums. The crowd greatly increased between where we left the head-constable and the graveyard. We caused summonses to be issued against the two parties above named, but they could not be found at the residence given by them at the gate. The crowd increased to 200. The crowd huzzaed and made use of derisive remarks like as if we were not wanted there, and the party remained in the graveyard about three-quarters of an hour. When the crowd huzzaed, Constable Lynch says he was afraid. Constables M’Parland and Clarke say they were not afraid. Constable Lynch considered it was not judicious to go down into the graveyard and kept the men from doing so in consequence of the aforesaid remarks of the crowd. Some of the party in the churchyard had orange scarfs. After ten minutes to one o’clock they left the churchyard. Robert Rice was with them playing the drums. They went towards Dungannon. At this time there were eight drums, two fifes, no scarfs or colours. The crowd came as far as the cross-road. There were about fifteen men dropped out of the crowd who gave a shout—they called us ‘dog pelters,’ ‘pig hunters,’ and ‘bobbies,’ and hooted us. Do not know any of these fifteen men. Went on to Lahy’s Corner. A good many of the party stopped there. We passed on towards the Bush. A man told us to go the other road. Sub-Constable M’Parland turned round and told him to be guarded in his observations. We went on towards the Roman Catholic chapel. Between Lahy and the chapel a stone was thrown of one pound and a half weight. At this time the main body was in front, and when the man M’Parland so spoke to was behind. The parties now present were with the main body, except Miller. An old man then passed us by with an orange scarf on him from behind to the body before. We did not know him. When we came to another cross-road a portion of the party stopped and hooted us as we passed. Some of those who stopped passed us again to the front party. At this time we saw another orange scarf. One of the men had an orange handkerchief in his hand and waived it round his head and shouted ‘no surrender’ repeatedly.”

I won’t read the cross-examination. We sent this up as a statement of facts which had occurred and which seemed to us to throw some doubt on our powers. We sent it up and there is our answer, and I say if that answer can be given to that information in my opinion we are in just the same position as before.

4428. Mr. Commissioner COFFEY.—A part altogether from this case, are you not satisfied after reflection and consideration with the law of the land as laid down—

that where an assembly meets together and is likely to produce a breach of the peace at any later stage or at a greater distance from where they met, the parties or any of them, are at law amenable.

Witness.—Most clearly—having heard your opinion, I have not the slightest hesitation in saying that, but there is one question upon that I would like to ask. Suppose, after that is asked, that the man swears he believes that the drumming party tends towards a breach of the peace. We will suppose he does so—that as they go along the road it will lead to a breach of the peace if that party goes into the town, or if another party comes out of the town to attack them. That will be his explanation of that. Now, that explanation appears to be somewhat as the other given in that information, and what are we to do if the law adviser says we cannot proceed?

Mr. Commissioner COFFEY.—I don’t agree with that.

Sergeant *Armstrong*.—One word on this. Nothing can be more clear and distinct than the opinion of the head-constable himself in his information, to wit, that although there did not appear any immediate cause of anxiety or danger, if there was an opposing party on the road there would be a breach of the peace. That is stated. That is sent up for the opinion of the law adviser—neither he nor any other authority till your lordships ever announced that under that state of things the assembly would be illegal. It is impossible to give such an announcement until it is made.

Mr. Commissioner COFFEY.—I venture to appeal to yourself in the public interest as a gentleman of great distinction and eminence in your profession, and one holding high judicial appointments occasionally—have I laid down the law correctly or not according to your opinion? I ask that in the interest of the public.

Sergeant *Armstrong*.—I firmly believe you have, and that you have done so in a most sound and practical and well-considered exposition.

Witness.—I assure, Mr. Commissioner Coffey, I think so too. That is my opinion.

Sergeant *Armstrong*.—We both concur in that view, but at the same time the question is here with regard to this inquiry—what sources of information were before the magistrates? They had doubts; they had them before the law adviser, and, with great respect, the law adviser never said what you have announced, and he might have said it and substantially complied with the law of the land; but the reply is on a totally different state of things. He does not grapple with the facts suggested by the information. He gave these the go by, and he says, “I recommend you to do what the magistrates did at Newry.”

Mr. Commissioner EXHAM.—I would for myself say that if I drew any inference from the information which appears to have been taken down with great accuracy, I would have very little hesitation in saying that an offence was disclosed.

Witness.—That is my opinion too.

Sergeant *Armstrong*.—An announcement too I humbly take the liberty of saying I entirely concur in. But the law adviser never said it, though the magistrates asked his opinion.

Witness.—I am sure I am gratified that the Commissioners have stated their opinion so distinctly, and I have made up my mind that the first drumming party that are brought before me I will send for trial, but I have my own notion of what the result will be.

Mr. Commissioner COFFEY.—I have had some slight judicial experience, and I am aware that in party cases arising out of the 12th July, when there have been actual breaches of the peace, the men appeared in the dock with their arms round each others necks, as if they were the best friends in the world. This is done to get themselves out of the scrape they were in, and these very parties are ready on the next 12th of July to be at it again.

Mr. Commissioner EXHAM.—As far as the peace of this town is concerned, I think the time we have been spending here has been very well spent if for no other reason than that so far with Mr. Commissioner Coffey’s opinion, indorsed by the high authority of Sergeant

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Armstrong, there will be no question of what the law is, and how it is to be stated and acted on by the magistrates.

Witness.—We are satisfied with that, but with due deference we want to be exculpated from the law adviser's opinion.

4429. Mr. *McLaughlin*.—Allow me to ask you a question, not in reference to the views you have expressed to-day, but as to what you meant exactly by saying towards the close of your observations, "I know myself what the result will be." What does that mean? It might be taken by the people here wrongly, and it is only just to give you the opportunity of setting yourself right?—I will tell you. Last July we sent forward six parties for trial at Omagh. Mr. Smith the same day applied for summonses for a drumming party, where he stated there was no apprehension of a breach of the peace at the time. The magistrates refused to give the summonses, but observing that Captain Ball was present, I said that any magistrate who differed with me in opinion could sign the summons, and take the informations, and send the parties for trial, and throw the onus, the responsibility, on the judge and counsel at Omagh. We had exhausted the law adviser, and would like to try the judge and counsel at Omagh what they would do. What was the result? Six cases went to Omagh; there were no convictions under the prosecutions, and in the cases I am speaking of Captain Ball, in the exercise of his discretion, did not take informations or send them to Omagh, which he might have done if he liked.

Sergeant *Armstrong*.—Because there was no guide or authority.

Witness.—That may be, but I gave my opinion that day, and purposely directed my observations towards Captain Ball, that any magistrate could sign the summonses, and any magistrate could take informations without any other person.

4430. Mr. *Barry*.—Why should your observations be directed to Captain Ball more than to any other magistrate?

Witness.—I will tell you. Because Captain Ball held a different opinion from what I did.

Mr. *Barry*.—But were there peculiar reasons why Captain Ball of all men should not—

Sergeant *Armstrong*.—There is no reason why Captain Ball should be afraid to do his duty.

Mr. *Barry*.—Captain Ball is not afraid to do his duty.

Sergeant *Armstrong*.—If he is or was he is utterly unfit for his position.

Mr. *Barry*.—It is not a question of being afraid to do his duty, but of misconception of motives that interferes with the efficiency of the discharge of his duty.

Sergeant *Armstrong*.—That is attributable to moral cowardice.

Mr. *Barry*.—It is not attributable to moral cowardice. It is simply this, that it would impede him in the discharge of his duty if he was supposed to take a view of these Orange processions different from the view taken by the other magistrates.

Sergeant *Armstrong*.—If he conscientiously takes a different view he is bound to act on it irrespective of any comments made.

Mr. Commissioner EXHAM. — Certainly. But in justice to Captain Ball we should say that we have documents before us that shows very well what Captain Ball did in his anxiety to put these things down.

Witness.—Certainly. Most certainly.

Mr. Commissioner COFFEY. — And it is infinitely better that he should do so, acting in harmony with the other magistrates, all sitting together, and in concert together, than by taking a different view from the others, if it were possible to do so. But I quite agree with Sergeant Armstrong that if a man of firm, strong, and conscientious views believes that duty requires him to do anything, and the magistrates differ from him in that case, if he is a judicial officer, he is bound to know no party, to have no fear or apprehension in

the direct discharge of his duty, and I assume that Captain Ball is quite equal to that duty.

Sergeant *Armstrong*.—All Mr. Newton says is that he declined to take informations, but stated that any other magistrate would be justified in doing so, and that Captain Ball was then—

Mr. Commissioner COFFEY. — And in the exercise of his discretion did not think it desirable to do so.

Mr. *Barry*.—What I object to is any statement that he alluded specially to Captain Ball. There was no more reason to allude to Captain Ball than to any other magistrate.

Witness.—I said I specially intended it for him.

Sergeant *Armstrong*.—There was a special duty on him.

Mr. *Barry*.—I deny that altogether.

4431. Mr. *McLaughlin* (to witness).—Let me remind you of the question. Will you be good enough to tell me in plain English what did you mean by saying "I know what the result will be?" Did you mean that nothing would come of it when it went to the assizes?—I will tell you. What I mean is this:—From my professional experience about cases—not about this particular case—we take informations that a party were drumming along the road—we take informations that that is calculated to produce a breach of the peace. Upon cross-examination it appears that this breach of the peace will occur at a subsequent period by this party going into town or at a subsequent period by a party coming out of town and attacking them. Very well. I have heard cases tried, and heard lawyers—talented lawyers, not attorneys, but barristers—making such an exhibition of this that the Judge will charge the jury, and the jury will acquit the prisoners, and they will be sent home. Now I have been trying since the last day to put it into a short proposition, and it means this—that nothing will come of it in the long run—that the parties will keep along the road. That is what I am apprehensive of—honestly apprehensive of.

4432. Do you think that that expression of opinion that the matter will break down, will be calculated to deter any of those in court listening from taking part in a drumming party after this? Answer, if you please?—Well, it is not intended for that.

4433. But will it have, as the human mind is now constituted, will it naturally have that effect?—Well, I should think it ought not, when they see me taking informations if the case comes on.

4434. Mr. Commissioner COFFEY. — Let me follow up that question with another. Am I correct in understanding you now to say in your deliberate opinion you think that for the purpose of putting down that which you swear to be such an evil and such a pest, there ought to be a summary power, and that you would like to be armed with a summary power to deal with it?—Most assuredly. That is what I meant, and that until there is ample power to stop it in that way.

4435. Mr. Commissioner EXHAM. — And that that summary action should be on the part of the magistrates?—Yes. If, as suggested, a summary jurisdiction was placed in the magistrates, and that they could meet out a maximum and minimum punishment. If that was in the power of the magistrates, they would decide the case as jurors as well as magistrates. They could either send the case for trial or pass their own final judgment. They could find men guilty who were guilty, or be answerable to public opinion or such court as might be chosen. All I wanted was official intimation of opinion as to the law, and I conceive that both of you gentlemen have given that opinion in such a way that certainly I don't mistake, and I am determined to act upon that opinion whether it is right or wrong.

Sergeant *Armstrong*.—Now, wholly irrespective of the tendency to create a row at a future time, you will take informations and send them on?—I will, if it is sworn it is calculated to produce a breach of the peace.

Mr. Commissioner COFFEY. — You are powerless unless they do.

Sergeant *Armstrong*.—That amounts to this, that every drumming party in this place is illegal.

Mr. *M'Laughlin*.—I deny that the law laid down by the Court is that every drumming party in this district is illegal. It is only illegal when it has a tendency to provoke a breach of the peace.

Mr. Commissioner *COFFEY*.—The magistrates are perfectly powerless unless people come forward and swear that it is calculated to produce a breach of the peace, the drumming that is going on in their hearing.

Mr. Commissioner *EXHAM*.—With respect to the depositions of the 10th May, 1869, they have been sent down to us. I have read them, and I think it is only fair to say that, as far as I can see, the whole of what was detailed to us with respect to the breaking of that man (Hewston's) windows, was disclosed, and also the fact of the mob going up and down, and the windows in the chapel being broken. The crowd is described as a crowd of over 200 at one portion of the evening; and in the deposition of Hewston he says, "I was caused great alarm by this occurrence in consequence of the illness of my wife," and so on.

Mr. *M'Laughlin*.—That is referred to in the memorial.

Mr. Commissioner *EXHAM*.—Yes; the parties who threw the stones are not identified, and you see evidently what Mr. Johnston thought of it, for here is his memorandum—"No breach of the Party Processions Act is disclosed." The original summonses were sent up and remained at the Castle.

Mr. *M'Laughlin*.—The depositions disclosed a riot, and they were sent up for an opinion as to the Party Processions Act, and Mr. Johnston says, what everybody knew, that no offence against the Party Processions Act was disclosed.

Mr. Commissioner *COFFEY*.—And the summonses are for a breach of the Party Processions Act. "That the defendants, with others, did unlawfully assemble to commit a breach of the Party Processions Act." His minute on that is, "No breach of the Party Processions Act."

Sergeant *Armstrong*.—And for the riot they might have gone on.

Mr. Commissioner *EXHAM*.—Yes.* He points out that a riot is disclosed on the informations.

Sergeant *Armstrong*.—He does not point out that they might deal with the drumming party, because it would assuredly lead to a breach of the peace.

Mr. Commissioner *EXHAM*. No; but he says the parties might be summoned for riot.

Mr. *M'Laughlin*.—I suppose both the Commissioners have read the informations in respect of which Mr. Commissioner *Exham* has drawn my attention?

Mr. Commissioner *EXHAM*.—Well, I read them hurriedly.

Mr. *M'Laughlin*.—The informations of the 10th of May, 1869. Can you tell me is there anything in these informations to disclose the fact that the question was sought to be put—whether these drumming parties were calculated to provoke a breach of the peace in Dungannon, and that the question was refused?

Mr. Commissioner *EXHAM*.—No; I don't see a word of it, and I can understand the reason why.

Mr. *M'Laughlin*.—But there is not a word of it there.

Mr. Commissioner *EXHAM*.—This was a summons under the Party Processions Act, and under that act it is quite immaterial whether the drumming party was calculated to lead to a breach of the peace or not. The offence under that act may be by walking in procession, and having weapons or banners, or by playing party tunes, whether calculated to provoke a breach of the peace or not. If it was an unlawful assembly that question as to its being calculated to provoke a breach of the peace would be of the very essence of the crime; and if the summons here was for being of an unlawful assembly, the magistrates who would refuse to allow such a question to be put would be totally ignorant of their duty.

Sergeant *Armstrong*.—There was a difference of opinion on it. The magistrates were two and two, and the question was not material.

Mr. Commissioner *EXHAM*.—Under the Party Processions Act it was quite immaterial.

George Arthur Moloney, esq., R.M., sworn; examined by Sergeant Armstrong.

Geo. Arthur Moloney, esq., R.M.

4436. You are a resident magistrate?—I am.

4437. Where are you stationed?—At Omagh.

4438. I believe you were in Dungannon on some occasions?—I was.

4439. When disturbances were anticipated?—Yes.

4440. Try and recollect an occasion on which informations were sent up to the law adviser that you were connected with the taking of?—Well, I have an indistinct recollection.

4441. Do you know what it was about?—Yes, I recollect.

4442. What was it about?—It was about a procession that came up the highway a short distance, and across the front of the college, and two or three panes of glass were broken in the chapel windows.

4443. It was with respect to that?—Yes.

4444. Did you assist in the investigation of the matter to the extent to which it was inquired into here?—Yes, I was here two days at petty sessions.

4445. And I suppose you recognise the informations now produced?—I have not seen them yet.

4446. Well, there is no doubt they are your informations? You heard the police examined?—Yes.

4447. Were the informations to the best of your knowledge and belief taken down fairly and fully?—I think so; that was the intention.

4448. That was the intention—and they went on, and we know the result?—I am told I took them in my own handwriting. I have no recollection of it. Of course I would know my own handwriting. [Informations handed to witness.]—Yes, that is my handwriting.

4449. Do you recollect any difference of opinion

among the magistrates, or to having a question answered with respect to the tendency of this to provoke a breach of the peace?—I have no recollection whatever of it. I have been trying to bring it to my memory.

4450. If the point did arise I would take it for granted you gave it the best consideration you could?—Well I think I would.

4451. Had you any object in suppressing it, or preventing the answer being given?—None whatever.

4452. Were you here on any other occasion investigating any of these disturbances?—I may have been, but I remember nothing particular.

Cross-examined by Mr. *M'Laughlin*.

4453. You are not one of the magistrates whose conduct is subject of inquiry here?—I believe not.

4454. How long have you been a resident magistrate in this neighbourhood?—Eight years. I am not so long here. I think I am here five years.

4455. And I believe formerly you were an officer of constabulary?—I was.

4456. Your efficiency is of course increased by that? Do you know a place near this town called Killyman?—Yes, I know it.

4457. How far is it from this?—About four miles.

4458. Is not that the place that gives to certain people there the celebrated name of the "Killyman wreckers"?—I believe so.

4459. I believe I am correct in saying that the Killyman wreckers are Orangemen, a little enthusiastic in the way of pulling down houses and so on?—I always understood that.

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Geo. Arthur
Moloney, esq.,
R.M.

4460. It is about four miles from town?—I think about four miles.

4461. I need not hardly ask you whether you are inclined to observe the law as laid down by Lord Chancellor Brewster in his celebrated letter?—Well really I don't now recollect how he laid it down. I have not read it lately.

4462. But would you—a magistrate, a judge within your own range of jurisdiction, consider yourself bound to follow the law as laid down by Lord Chancellor Brewster?—I would to a great extent.

4463. To a great extent?—Yes.

4464. In what respect with regard to the limitation you put out in your answer, would you feel bound not to follow it?—If I conscientiously thought he was wrong in his view of it, I would take my own view of it.

4465. I mean nothing offensive in saying I suppose you never studied law as a science?—Never, I always went in for justice as distinguished from law.

4466. You always went in for justice? May I ask you if you always brought it out with you?—Well really I don't understand the meaning of that.

4467. You don't understand that?—No.

4468. You have not been reading our Mutual Friend. But I want to know when you went in for justice in that way, did you always succeed in accomplishing your intention? Did you bring it out with you in fact?—I don't know, I intended to do my best.

4469. As you have mentioned it. Did you not go in for justice in that Donoghmore case, and was it not the opinion of Lord Chancellor Brewster that you did not bring it out with you at all?—It was. But I do not consider that his decision was a fair one for the magistrates. I believe they acted with pure honesty in the case, and I think so still; the magistrates may have made an error of judgment, but most certainly not one of the heart.

4470. And they came out of it with a reprimand. I am not going into that now. But I ask you this. Do you conceive it to be a correct appreciation of your duty as a magistrate to say—when the head of the magistracy—the head of the judicial bench in this country tells you authoritatively that the law is so and so, that you will just take so much of it as you like and discard as much of it as you like, you not being a scientific lawyer—is that your view of a magistrate's duty?—I will not give an opinion on that.

4471. You will if you are able?—I don't think I am bound to answer that question.

4472. Mr. Commissioner COFFEY.—You had better not if you entertain a different opinion.

Witness.—My opinion is nothing.

4473. Mr. *M'Laughlin*.—But it is only fair to invite your attention very briefly to what the effect of that would be. Are you aware as regards the authoritative

exposition of the law, that the Judges of the Courts are bound by the decisions of the superior tribunals, are you aware of that as a lawyer?—Well, I am not much of a lawyer to know that.

Mr. Commissioner COFFEY.—I think he made the answer without consideration. He did not see the effect of it.

Mr. *M'Laughlin*.—It is a very serious matter.

Mr. Commissioner COFFEY.—I presume he never meant to act in direct violation of the opinion of the Lord Chancellor.

4474. Mr. *M'Laughlin* (to witness).—It is only fair to ask you further. Would you feel yourself bound to act on Lord Chancellor Brewster's letter more than any other magistrate?—No.

4475. Will you give me a plain notion of the extent you think as a magistrate, you are bound to act on a document like that?—Not answered.

4476. Your opinion with respect to that letter does not differ in the slightest degree from the opinion of the magistrates generally—you think you ought to be bound by it if you agree with it; otherwise not?—My opinion is that the magistrates would be all bound by the Lord Chancellor's opinion. I think so. That is what I mean.

4477. Mr. Commissioner COFFEY.—You would be bound by the law of the land as laid down by the judges of the superior courts?—I would.

Mr. *M'Laughlin*.—He had a right to say that.

Mr. Commissioner COFFEY.—You held him strictly by his answer on cross-examination and did not let him out.

Mr. *M'Laughlin*.—I examined him very quietly.

Mr. Commissioner COFFEY.—And very ingeniously.

4478. Mr. *M'Laughlin* (to witness).—I have very little more to ask you. I suppose you regard those drumming parties as a little annoying?—I do.

4479. And I suppose you agree with those who say that they are calculated to excite bad feeling amongst the Catholics and thereby to endanger the public peace?—It is certainly my view.

4480. And therefore it is a matter of utmost necessity in the administration of the law and for the preservation of the peace that they should be put down?—Decidedly.

4481. No matter from what party proceeding?—Decidedly.

4482. You would also conceive it your duty as a magistrate, whether a resident magistrate or an ordinary magistrate, if the police neglected their duty in that respect to remonstrate with the police?—Certainly.

4483. That answer applies to the duty of an ordinary magistrate as well as a resident magistrate?—I should say so.

The witness then retired.

Alex. M'Kenzie
Lyle, esq., J.P.

Alexander M'Kenzie Lyle, esq., J.P., sworn; examined by Sergeant Armstrong.

4484. Mr. Lyle, how long have you been a magistrate—since what year?—Nearly twenty years. I nearly forget the year.

4485. Have you ever during that time given any encouragement or countenance to orange processions or drumming parties?—Never.

4486. Have you acted in a contrary spirit?—Decidedly.

4487. Now, a letter was read in court yesterday from Joseph B. O'Neill, which contains three imputations. I will read the letter for you:—

Donoghmore, Dungannon,
August 19, 1871.

DEAR SIR,—Referring to the evidence of Inspector Heard at the Dungannon Inquiry, I find he says Mr. Lyle is most anxious to put down drumming parties. Now, I happen to live very close to Mr. Lyle and for some years past on each first of July I can see a handsome bonfire blazing upon the hill immediately beyond Mr. Lyle's house inside his farm. This you will say is not exactly the way to put a stop to orange displays; it is simply a notice to his neighbouring

Orangemen to be in readiness for a display on the following 12th. Well, there is a neat little church at Donoghmore very near to Mr. Lyle's house, and on each anniversary flags are to be seen floating from its roof where they remain for several days. If Mr. Lyle was anxious to have a stop put to drumming parties he would not allow such insulting emblems to remain on the church for a single hour, as a word from him would put an end to it. Some years ago I saw a drumming party on the 12th of July enter Mr. Lyle's grounds, play the usual tunes and then retire by another gate. Now see if these things show anxiety on the part of Mr. Lyle to put a stop to drumming parties; I leave you to judge.

Yours, &c.,

JOSEPH B. O'NEILL.

4488. Now, begin in the order of time. He says some years ago he saw a large drumming party enter Mr. Lyle's grounds, play the usual tunes, and then return by another gate. Now, have you any knowledge of any such drumming party on the 12th of July ever being on your grounds?—I have ascertained the fact, that on a certain occasion—

4489. About how long ago?—I cannot fix the date, but it is beyond eight or nine years; and I can prove to you by the constabulary who were stationed at Donoghmore, that in my absence—

Mr. *M'Laughlin*.—I think this is a little irregular.

4490. Sergeant *Armstrong* (to witness).—Were you at home at all?—No.

Mr. Commissioner *COFFEY*.—He says, and this answers the whole thing, that he was not there at all.

4491. Sergeant *Armstrong* (to witness).—Were you there at all?—I was not there at all.

Mr. *M'Laughlin*.—What I object to is, his telling us what the constabulary will prove.

4492. Sergeant *Armstrong* (to witness).—Is it since this inquiry opened that you heard of this matter, having made inquiries?—I never knew of it till yesterday.

4493. Mr. Commissioner *COFFEY*.—Till yesterday?—Till yesterday. That is what will be explained. The thing speaks for itself.

4494. Sergeant *Armstrong*.—I want to know did you ever invite an Orange party to come to your place?—Never.

4495. Were they ever there with your knowledge or sanction?—Never.

4496. And until the matter was mentioned, in consequence of Mr. O'Neill's letter, your attention was not attracted to it?—No.

4497. You know nothing about it?—Not answered.

4498. Has Mr. O'Neill been on friendly terms and intimate terms with you?—Most cordial terms.

4499. Did he ever call your attention to this matter of which he now complains?—No, never.

4500. Did you ever hear of it from any person?—My nearest neighbour did not know of it after hearing it here.

Mr. *M'Laughlin*.—That is not evidence—that his nearest neighbour did not know it.

4501. Sergeant *Armstrong* (to witness).—At all events you did not know of it, and O'Neill never complained of it, and you were on friendly terms from that day to this?—Very much so.

4502. So much for that. Now as to these flags on the church. Have you actively interfered to prevent the exhibition of flags on the church at Donoghmore?—In every way in my power; by solicitation and advice.

4503. Have they ever floated there with your sanction or approbation?—It is most opposed to my wishes.

4504. I understand there is a manufacturer in the neighbourhood, Mr. Brown?—Yes; Mr. Brown, an extensive merchant.

4505. He has a large number of persons in his employment?—A great number.

4506. And he is influential?—Very.

4507. Did you apply to him in reference to the hoisting of these flags on the church?—I got information that such a thing was intended, and on more than one occasion, I am certain on several occasions, I called on Mr. Brown to induce him to assist me in preventing what ought not to be.

4508. That is the exhibition of flags?—The exhibition of flags.

4509. And we will tender him for examination as to that. He will be here?—Yes.

4510. Did you endeavour to enlist his aid?—He was most anxious, and joined me in every way.

4511. To prevent it?—To prevent it.

4512. Is he a man of liberality in politics?—He is, and of respectability.

4513. And did he seek to prevent it as far as you know?—He did.

4514. Of course you know the Rev. Mr. M'Neece, the perpetual curate of the church?—I do.

4515. Did you apply to him to prevent it?—I did.

4516. Did he co-operate with you?—He did.

4517. Do you believe he did his best to prevent it?—I am satisfied of it.

4518. Is this the fact, that when you go to bed at night there are no flags on the church, but when you

get up in the morning there they are?—Mr. M'Neece will prove that the very parties who promised not to put it up the last time, the next morning caused the flag to be floating there without his knowledge or mine.

4519. And without his approbation?—Against his approbation, and against my strongly expressed opinion.

4520. Did you ever see on a hill within your grounds a bonfire on the 1st of July?—Never.

4521. Did you ever permit one?—No.

4522. Did you ever know of anything of the sort until it was mentioned here?—Not until it was told in this court.

4523. Then you made inquiry?—I did, certainly.

4524. And of your son?—Of my son.

4525. And he is here?—He has been invalided, but he will be here if necessary.

Mr. Commissioner *COFFEY*.—This may not be an exaggeration, but it is a complete misrepresentation, not intentional I believe.

Sergeant *Armstrong*.—I don't wish to use harsh words.

Mr. *M'Laughlin*.—With great respect, I don't see any unintentional misapprehension on the matter.

Mr. Commissioner *COFFEY*.—I say misrepresentation.

Mr. *M'Laughlin*.—Mr. O'Neill is as respectable a man as Mr. Lyle, and Mr. Lyle is one of the most respectable men in court.

Mr. Commissioner *COFFEY*.—Still the facts seem to be misrepresented.

Mr. *M'Laughlin*.—How?

Sergeant *Armstrong*.—To begin with, he writes a letter, in which he takes no distinction between "enter" and having "entered."

Mr. Commissioner *COFFEY*.—The imputation on Mr. Lyle is that he could by his influence prevent this, and that with his knowledge bonfires have been blazing for several years, and flags flying with his approbation.

Mr. *M'Laughlin*.—Could any inference be more natural?

4526. Sergeant *Armstrong* (to witness).—Is there a word of truth in this—"For some years past on each 1st of July I can see a handsome bonfire blazing on the hill immediately above Mr. Lyle's house"—do you believe there is one word of truth in that?—I am prepared to prove by the constable at my station—

Mr. *M'Laughlin*.—I object to this.

4527. Sergeant *Armstrong* (to witness).—Did you ever see a bonfire there?—No.

4528. Did you ever authorize anything of the sort?—Never, and the constable of my district will prove to you—

Mr. Commissioner *COFFEY*.—You had better not state that.

Witness.—But this is another case.

Mr. Commissioner *COFFEY*.—You have already proved that you did not know, authorize or sanction, or indeed hear till yesterday of one of these matters.

Witness.—This is as regards the bonfires; another, and the constable of my district will prove—

Sergeant *Armstrong*.—Don't mind that.

Witness.—I will prove it by him.

Mr. *M'Laughlin*.—You are an experienced magistrate. You must know the elementary rules of evidence.

Mr. Commissioner *EXHAM*.—The imputation is that the bonfire on the 1st of July was a signal "to his brother Orangemen."

4529. Sergeant *Armstrong* (to witness).—Listen to this—"I can see a handsome bonfire blazing on the hill immediately above Mr. Lyle's house, inside his farm. This, you will say, is not exactly the way to put down orange displays; it is simply a notice to his neighbouring Orangemen to be in readiness for a display on the following 12th." Now, in the first place, did you ever to your knowledge exhibit any symbol or any intimation to neighbouring Orangemen?—Never.

SEVENTH DAY.

August 23

Alex. M'Kenzie
Lyle, esq., J.P.

SEVENTH DAY.

August 23.

Alex. M'Kenzie
Lyle, esq., J. P.

4530. You know nothing whatever about it?—No.

4531. Are you an Orangeman?—No.

4532. Were you ever one?—No.

4533. Have you had anything to do with the body at all?—Except to prevent them walking.

4534. Do you recollect the day on which the informations that have been turned up were taken with respect to the breaking of the chapel windows and the other windows?—Yes, I was in court.

4535. I believe you were one of the magistrates?—I believe so.

4536. And Mr. Newton was another, Mr. Stanley another, and Mr. Moloney another?—I believe so.

4537. I assume you know that for a breach of the Party Processions Act it is not necessary that there should be a breach of the peace, that it is not an element material?—Not answered.

4538. It appears some gentleman, an attorney, objected to a question in that direction, I believe it was the attorney for the accused—do you recollect how the magistrates polled on the occasion? Mr. Newton says he was in favour of the question—who were with him?—Unless the Court thinks it my duty to disclose it, I have always held the opinion that the magistrates' counsel was to remain amongst themselves; but if the Commissioners wish it I will answer.

4539. We require an answer?—There was a difference of opinion on it.

4540. I believe you were in favour of putting the question?—I was.

4541. And so was Mr. Newton?—So was Mr. Newton.

4542. And Mr. Moloney and Mr. Stanley thought otherwise?—They did.

4543. And, the Court being equally divided, there was no rule?—There was no rule.

4544. And the question was not put?—Such is the fact.

4545. So far as you know and were concerned were those informations of '69, with respect to which this question arose, taken honestly, and fully, and fairly to the best of your skill and judgment?—With the greatest deliberation and care.

4546. Did you, as a magistrate, ever understand or read any opinion or advice that gave you to understand, up to the announcement from the bench now, that you may treat as illegal a drumming party, irrespective of its tendency to produce an immediate breach of the peace?—Not at all. I am not a lawyer. I never pretended to be a lawyer. I came to this court to endeavour from evidence—(we have the law ably stated in most cases of particular importance by professional men)—of facts to gather the truth to guide me in the opinion I may form. I have endeavoured, during my attendance in this court, to form my opinion conscientiously on the facts as to the law and law points. I have never studied them; it is not my duty.

4547. Do you recollect a visit of Mr. Brooke here in July, '65? He was here then?—He was.

4548. And you were at home at that time?—I was.

4549. I believe Mr. Coulson was the resident magistrate stationed at Omagh?—Stationed at Omagh.

4550. Do you recollect whether he was sent for to come over here in anticipation of the 12th of July?—He was; and on all previous occasions.

4551. Was it the habit of the local magistrates here to invite the assistance of the experienced resident magistrates from other places on each anniversary?—For years.

4552. And I believe when they did arrive the management of things was principally put under their control?—Altogether, I would say.

4553. Do you recollect meeting Mr. Coulson and Mr. Brooke on the 11th of July here?—I do.

4554. That was with a view of making arrangements for the next day?—Yes.

4555. Was there an arrangement come to as to Mr. Coulson going anywhere?—Yes.

4556. What was that?—He was specially sent to Castlecaulfield with a large detachment of constabulary.

4557. Was there any special reason for that?—There was, if my memory leads me. I have some recollection of an anonymous letter—

Mr. M'Laughlin.—I object to this.

Mr. Commissioner COFFEY.—The whole thing is to know what arrangements were made.

Mr. M'Laughlin.—No doubt; but an anonymous letter—

4558. Sergeant Armstrong.—I will pass it by. (To witness).—Was there any communication made to you that danger was apprehended at Castlecaulfield, and that a large police force was necessary?—A communication was made to the magistrates.

4559. And accordingly it was arranged that Mr. Coulson should go there with a strong police force?—Mr. Coulson breakfasted with me on the morning of the 12th of July, 1865, and went then to Castlecaulfield, followed by the police. Mr. Brooke stayed at Dungannon.

4560. It was at Castlecaulfield that any danger was apprehended?—As then stated.

4561. And as you believed?—And as we believed.

4562. You stayed at home to look after your own business?—Yes.

4563. We are all aware you were not in town at all on the party coming in that morning?—Yes.

4564. You were at home?—I was.

4565. Mr. Brooke was here, I understood?—He was.

4566. And was Mr. Coulson afterwards sent for?—Mr. Coulson was sent for in consequence of this early party appearing in the town. Every conveyance was sent to bring Mr. Coulson and the constabulary from Castlecaulfield back to town.

4567. In consequence of the early irruption in the morning?—Yes.

4568. Now, on the 13th, I believe, you having been summoned on the grand jury, had to go to Omagh?—I was, and sworn on the fiscal business on the 13th July. I have witnesses to prove it.

4569. You were detained for four days?—For several days.

4570. On your return did you come into town?—I did.

4571. Did you see Mr. Coulson?—I did.

4572. How did you find him occupied?—In this room, investigating the matter.

4573. And taking informations?—Yes.

4574. Did you proffer your services if you could be of any use?—He said I could not be of any use to him.

4575. Did you offer to do so?—He said I could not render him any assistance. He was in the act of taking the informations, and had been doing so for a long time.

4576. Now so far as you know was there anything of an irruption of drumming parties, or Orangemen, or anything of that sort foreseen for the 7th of August, when we all know there was some disturbance?—No, it was unexpected.

4577. It was unexpected. Nobody thought of their coming. As far as you know was Mr. Coulson immediately written for?—He was asked to come over in consequence of what took place on the 7th of August.

4578. Did he come?—He did.

4579. And was there an investigation held into the matter?—He and Mr. Brooke held an investigation.

4580. Was Sub-Inspector Smith in charge of the police at the time?—Yes. He can prove all the facts.

4581. Was there a man named Collins then in the force?—There was Sub-Constable Collins.

4582. He is a Constable now?—I believe he is.

4583. Was Fitzpatrick here then?—I think he was, but I cannot take upon myself to prove it.

4584. You were at home at Donoghmore on the 7th of August?—I was.

4585. And you know nothing of what occurred until it was all over?—Nothing.

4586. I believe in consequence of that unexpected riot that night, some apprehension was entertained as to the 12th of August being the anniversary of the opening of the gates of Derry?—Yes.

4587. Now, dreading lest anything should happen

by surprise or in any way on that night, did the magistrates take any precautions to preserve the peace?—They required the attendance of a large detachment of cavalry, the 9th Lancers; and the 60th Rifles also were here for several days.

4588. Were they posted through the town for fear anything should occur?—Yes.

4589. And the result was that peace was not broken?—No.

4590. And there was no disturbance at all, I believe?—No.

4591. You recollect Captain Ball coming here?—I do.

4592. Now, I ask you personally was it a satisfactory matter to you that he was appointed?—It was to my mind a great satisfaction.

4593. Why?—I did expect it would have pleased parties who differed with me in religion, and that it would naturally lead to a good opinion of us.

4594. There would be a mixture?—Just so.

4595. As far as you were concerned was Captain Ball confidentially and cordially met by his brother magistrates?—I always acted, and the bench of magistrates always acted towards him at all times with the fullest confidence, and he to us, as I thought.

4596. Did you believe you possessed his confidence as he possessed yours?—I had the fullest confidence in him.

4597. And did you ever hear anything to the contrary?—Never until, I am sorry to say, the occasion of the unfortunate police inquiry.

4598. Up to that moment had he ever in any public proceeding remonstrated with you or with anybody else to your knowledge?—Never to me, nor, to my knowledge, with the bench.

4599. Or made you any suggestion with respect to the matter of your practice or your conduct?—Except any matter fairly involved, which we talked over without hesitation or reserve.

4600. You got no breath of censure from him in any way or suggestion?—I never heard even an allusion to it, as far as my knowledge goes.

4601. There are several other matters set down here with which manifestly you had no concern. Were you present the day depositions were taken with a view of sending them up to the law adviser before you would take informations?—Was it 1870 or 1871?

4602. Seventy-one?—What occurrence was that?

4603. The Killyman funeral?—I think I was. Oh, yes I was, certainly.

4604. The depositions were sent up, and the law adviser was of opinion that they did not disclose any case?—He was.

4605. And was not done so far as you were concerned or believed, and on the part of all the magistrates, fairly and fully to the best of their skill and judgment?—With every care and anxiety to meet the case.

4606. But your opinion that the recurrence of these insulting demonstrations demanded the putting down and stopping of all drumming parties?—Unquestionably.

4607. Do you think they should be stopped irrespective of any breach of the peace?—Yes, decidedly.

4608. You would be glad of a law that would render them, at all events having regard to the special circumstances of this neighbourhood illegal *per se*, in themselves illegal?—Indeed to me it would be a great gratification.

4609. Mr. Commissioner COFFEY.—Do you think it advantageous to the public interest to do it?—Decidedly.

4610. Sergeant *Armstrong*.—Without involving the magistrates in metaphysical discourses as to their tendency?—Not at all. I want plain directions. Give me plain directions, and I will carry them out.

4611. If you got plain directions not to care about the danger of an immediate row, or of a prospective row, but because they were drumming, to punish them, you would be glad of it?—Yes.

4612. Do you think the public service and the exigencies of the case demand it?—I do.

4613. It was said here that on one occasion some ladies took the liberty of looking at the band of some Orangemen?—Yes.

4614. Do you know anything of it?—I do.

4615. Tell us what it was?—It was on the occasion of a brother magistrate's—

Mr. *M'Laughlin*.—That is a part of the case I utterly abandon.

Mr. Commissioner COFFEY.—I am sure you do. I am sure ladies will look at music almost anywhere. If it was a Fenian procession they would have looked at it over the hedge.

4616. Sergeant *Armstrong* (to witness).—Tell us all about it, at all events. Who were there?—Some gentlemen friends and some ladies were breakfasting with me, and when they heard the music they all rushed to the wall to see this thing passing the county-road. That is the true fact.

4617. That is the head and front of the young ladies' offence?—Yes.

4618. Mr. *Barry*.—With respect to these drumming parties it has been sworn by several witnesses that during some years past they have been on the increase. Is that your recollection?—I must speak from hearing and from my judicial experience. I think they have increased, but not in my locality.

4619. Do you think that increase has taken place within the last couple of years, or do you go back a little further in date?—I think they have increased within the last two or three years, at least from my hearing.

4620. Do you think they have increased in this immediate neighbourhood?—Yes.

4621. Of the town?—Yes; at least that is my opinion.

Alexander M'Kenzie Lyle, esq., cross-examined by Mr. *M'Laughlin*.

4622. I was about to ask you a moment ago. These fine metaphysical distinctions are rather troublesome to understand?—To me they are decidedly so.

4623. You would like some plain law, and naturally, rather than the law as laid down with the fine-drawn distinctions of Mr. Newton?—I am not a lawyer, and can form no opinion. Mr. Newton is probably right.

4624. But you want a plain law—something you can understand?—Yes. I am not a man of great comprehensions.

4625. No; I did not say that. I suppose you have comprehension enough to tell me that Mr. Joseph O'Neill is one of the most respectable men in the community?—He has been so.

4626. Do you mean to say you confine it to any time, and say he is not now?—I don't, but I expected he would have the candour to tell me about what you are investigating to-day. I had that confidence in him to believe he would not have written that letter, or stated this, without, in some way, conveying to me that that was his opinion, or that such acts took place which I will be able to prove never took place.

4627. You don't think he told the truth here?—It is not for me to say, but the facts will prove themselves.

Mr. Commissioner COFFEY.—There is no one but must form the opinion that this letter was a misapprehension.

Mr. *M'Laughlin*.—That is a different thing.

Mr. Commissioner COFFEY.—An entire misapprehension. No one can doubt it.

Sergeant *Armstrong*.—Perhaps Mr. O'Neill never thought the letter would be read in open court.

Mr. *M'Laughlin*.—Don't you know that the very first intimation of this was my deliberately putting the letter into the Sergeant's hands? Don't you think, if I had any brains at all, I would know the letter would be used on the cross-examination of the witness?

Sergeant *Armstrong*.—Certainly not. You handed the letter to me with a direction not to use it at that time, nor did I.

Mr. *M'Laughlin*.—At that time, no doubt, but subsequently I saw sufficient of the letter to know that he should be examined and cross-examined out of it.

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Alex. M'Kenzie
Lyle, esq., J.R.

SEVENTH DAY.

August 23.

Alex. M'Kenzie
Lyle, esq., J.P.

Mr. Commissioner COFFEY.—Neither have I any doubt in the world but that if Mr. O'Neill should feel it incumbent on him to come forward after Mr. Lyle's explanation, and say he is extremely sorry at having made this imputation, he will do it, and he ought to do it.

4628. Mr. *M'Laughlin* (to witness).—Listen to this. Do you believe in the *bona fides* of Mr. O'Neill, when he says, "Referring to the evidence of Inspector Heard at the Dungannon inquiry, I find he says"—and then he gives the words of the newspaper—do you believe he was telling the truth?—Not answered.

Sergeant *Armstrong*.—What are the words?

Mr. *M'Laughlin*.—"That Mr. Lyle was most anxious to put down drumming parties." I will read the letter.

Witness.—I know the letter.

4629. Mr. *M'Laughlin*.—Do you not see he states there—and you heard him state in the box—it was because he saw in the newspaper Inspector Heard's evidence he thought it incumbent on him to mention this to those acting for the memorialists. Do you believe him when he said that?—I came here to answer any accusation made against me, not to make any against Mr. O'Neill? Is that sufficient? I make no accusation; he has made accusations against me, and as a gentleman I tender myself for examination, and tender explanations of these things. I am not going to give any opinion. I don't think it is my duty to form any opinion as to Mr. O'Neill.

4630. I would suggest that you do not get restive in cross-examination!—Pardon me; it is in my own interest not to do so.

4631. Indeed it is—kindly give me direct answers. Do you believe what he has sworn in the box that it was only by reading Inspector Heard's evidence his attention was attracted to the matter?

Sergeant *Armstrong*.—That is not the statement in the letter.

Mr. *M'Laughlin*.—The Sergeant may be quite right. It is necessary to read the letter. (Reads letter of Mr. O'Neill.)

4632. (To witness).—Have you any doubt in your mind that it was by reason of that portion of Inspector Heard's evidence he came forward?—I cannot judge of a man's intentions.

4633. Now do you think it a very natural thing if a man did see a bonfire on your grounds that he would infer you knew something about it?—Yes, certainly.

4634. You are a man of great influence in your locality and deservedly so, are you not?—I have the honour and gratification of being respected perhaps far more than I deserve.

4635. I don't say that, but you won't be deprived of any honour or respect you have by my cross-examination?—I don't think I will.

4636. I am sure you won't. Is it usual in this country for Orangemen, when marching in procession, to go through gentlemen's grounds regardless of whether he likes it or not?—I cannot say.

4637. Would you think it a very natural inference for a person that did not know your mind to draw?—Not answered.

4638. If that person—seeing the Orangemen walk through your grounds—would it be natural for him to think you would not be offended?—He may draw what conclusion he pleases.

4639. Would you think it natural?—No, I don't think it would be natural.

4640. Do you think anything could be more natural than to have that feeling about an exhibition of that sort until you gave this explanation at the end of a number of years?—No.

4641. Suppose you saw, let us say on Patrick's Day, there was a celebration of the Catholics to take place—suppose you saw on Mr. O'Neill's grounds a bonfire the night before; and a procession through his grounds the next day, would it occur to your mind that Mr. O'Neill was at least giving his countenance, I don't care whether your belief was erroneous or not—to the Catholic display? Would not that be a natural opinion?—There was a bonfire on the 17th of

August in his ditch, on his own farm, but I did not form an opinion on it.

4642. Suppose you saw an unmistakable party procession through Mr. O'Neill's grounds and across his lawn would you come to the conclusion that Mr. O'Neill was more or less a party to it? Would you think that an unnatural thing?—I don't know. These parties often trespass where they are not entitled.

4643. Would it be natural to think it was done without his consent?—I can form no inference.

4644. That is as far as you can go. I thought you wished to meet me in candour. How long have you been in the commission of the peace?—My commission was lost, but it is a very long time, certainly.

4645. Tell me when did you first hear of the proceedings of the 7th of August '65?—The next day.

4646. How many days after the day you heard of, then, were the parties finally sent forward for trial?—I cannot say.

4647. But some days intervened?—There were—I cannot say—

4648. But at all events as early as next day your attention was called to the matter?—Yes.

4649. I believe there is no doubt about the character of what took place—there were two firing parties—opposing parties, firing away?—I believe there is no doubt of it.

4650. And I believe it is equally beyond the reach of doubt that twenty of one party were sent for trial, and the number returned of the other party for that was *nil*?—Well, I cannot fix my memory with the number, but the facts speak for themselves.

Sergeant *Armstrong*.—It is not the fact. There were twenty of one side and eight of the other.

Mr. *M'Laughlin*.—Not in this transaction.

Sergeant *Armstrong*.—There were not twenty on the 7th of August.

Mr. *M'Laughlin*.—What was the number?

Mr. Commissioner EXHAM.—Eighteen.

Mr. *M'Laughlin*.—Well, eighteen—twenty in round numbers, or eighteen if you like.

4651. (To witness).—Now eighteen of the Catholics were sent forward, their names having been taken by the police, and of the Protestants the following number were sent forward—none—is that not so?—I think the facts are so, but I cannot remember them.

4652. In your opinion—and I am surprised the Sergeant did not ask your opinion in this—was not that a lamentable and shameful failure of public justice?—I think the constabulary then in charge will satisfy the Court on that point.

4653. I respect the soundness of your opinion, and I wish to have it. Having regard to these facts, was there not a melancholy and lamentable failure of public justice?—I think all parties who committed any offence should be punished if it could be proved; that is my opinion.

4654. Have you any hesitation in answering in the affirmative by the short word "yes," my question?—What is it?

4655. Was not that a lamentable and melancholy failure of public justice—yes or no?—If the fact is what appears by your statement—yes.

Sergeant *Armstrong*.—On the evidence given here?

4656. Mr. *M'Laughlin* (to witness).—That was the 7th of August. Now, the Sergeant has introduced a date which I heard in another part of the country once or twice before the 12th of August. I believe there was some anticipated rioting, or at least some anticipation of rioting on the 12th of August?—Such was laid before the magistrates.

4657. And I believe the opinion of the magistrates thereupon was, that it was absolutely necessary that they should get in cavalry, infantry, and police?—Yes.

4658. I will just in this respect imitate the Sergeant, and go back a little in the order of date, as I understand there were three remarkable days in the summer of '65; the 12th of July, the day of the wrecking of the Catholics' houses; the 7th of August, the day when one party were returned for trial and the other party was not, or the day of the transaction

out of which that result arose, and the 12th of August, in respect of which you anticipated a great disturbance?—Not answered.

4659. On the 12th of July Catholics were the principal sufferers as regarded the wrecking of houses?—Decidedly.

4660. On the 7th of August, '65, the Catholics were the principal sufferers in so far as they suffered by their being sent for trial, and the others not?—So it would appear.

4661. Now, in the interval between the 7th of August and the 12th of August, was there not a report that the country Catholics, taking the law into their own hands, were going to come in in force and with arms? Was not that something like it?—I think it was.

4662. And then, when you heard they were going out on this—the third day—did you not get cavalry, infantry, and constabulary?—We have on all occasions, as far as my recollection goes—on all occasions, elections, and everything on which we were led to think a breach of the peace would take place, required the assistance of the cavalry, and the resident magistrates to assist us in the execution of our duty.

Mr. Commissioner COFFEY (to Mr. M'Laughlin).—If there was a collision expected, I don't see that these precautions were wrong.

Sergeant *Armstrong*.—What were the magistrates to do?

Mr. M'Laughlin. — It would have been a great matter if these precautions were extended to the other two transactions.

Mr. Commissioner COFFEY.—It was sworn to that the Orangemen on the 12th July came in suddenly.

Mr. M'Laughlin. — The people, perhaps, are not sufficiently astute and intelligent; but they look at the probable result—one party not interfered with, the other party put down.

Mr. Commissioner COFFEY.—Still it is our duty to prevent the public from being under any misimpression by your cleverness and ingenuity.

Mr. M'Laughlin.—Do you think I could mislead you?

Mr. Commissioner COFFEY.—Not me, but other persons.

Mr. Commissioner EXHAM.—If the magistrates had strong suspicions of quarrelling occurring on the 7th of August, and then took no precautions, I could quite understand that.

4663. Mr. M'Laughlin (to witness).—Had you any means before the 7th of August—any reasons, from your knowledge of the locality, and your reports, to anticipate that there would be an incursion of Orangemen on the 7th of August?—I had none.

4664. Talking of resident magistrates, I think you said you have no objection whatever to act with the utmost cordiality with the stipendiary magistrates or resident magistrates?—Is that a question?

4665. I have so intended it?—I have always done so.

4666. And always will do so?—As long as I am in the commission I will discharge my duty.

4667. In point of fact, I think I heard you say you were rather pleased that a resident magistrate came to this locality?—I was delighted.

4668. I did not like to use so romantic a word?—Perhaps it is a wrong word.

4669. Not at all?—For a very good reason I would be delighted.

4670. I think you told us the reason when the Sergeant asked you—that it would naturally lead to the people forming a good opinion of you as a magistrate?—Yes; and relieve me from a great deal of troublesome responsibility.

4671. I wonder any man is a magistrate that is not paid for doing it?—In this locality it is not agreeable.

4672. We naturally like people to have a good opinion of us?—Yes.

4673. And I suppose you thought that favourable result would be achieved if he arrived—in point of fact, the circumstances of the locality and all that were

such as to cause that result?—To require and expect it.

4674. That is, the circumstances were such as to require the preservation of that opinion, and the coming of Captain Ball led you to expect it?—To expect it?

4675. Just so. It was you sent up this defence of the magistrates that went forward to the Castle?—Yes.

4676. Did it occur to you that the want of confidence expressed by the memorialists was genuine?—In what way?

4677. That they meant what they stated when they asserted that they had not confidence in the magistrates in party cases. Did you believe they were sincere?—I don't understand that.

4678. You know there was a memorial?—I do, but I don't think there is in plain words in it, "want of confidence."

4679. I will tell you what the memorialists say, whether rightly or wrongly, they have no confidence in the local magistrates?

4680. Sergeant *Armstrong*.—That may be your construction of the memorial, but there are no such words in it.

Mr. Commissioner COFFEY.—But it plainly means that.

Sergeant *Armstrong*.—But still in the questions put to Mr. Lyle let us be accurate. No doubt that is the drift of it, but it is not expressly stated.

4681. Mr. M'Laughlin (to witness).—To use the Sergeant's expression—is not the drift of the memorial an allegation that the memorialists have not confidence in the local magistrates as regards party cases?—So it would appear.

4682. Do you think they were *bona fide* in saying so—in earnest?—I believe they are.

4683. There is no doubt about it. Are there more respectable men in the town of Dungannon than the witnesses produced here, speaking generally, on the Catholic side?—No; and I have no hesitation in leaving my character in their decision.

4684. I think the result would justify your confidence. Now is there in Dungannon any magistrate that could not go so far?—I think not; at least I have no reason to think otherwise.

4685. Mr. John Hayden, who was a prominent man in getting up and agitating the memorial, is a respectable man?—He is.

4686. And a solvent man?—Yes.

4687. And a truthful man?—Yes, so far as I believe.

4688. Don't you think it was unfortunate the way you described him in the letter you sent up to the authorities; had it not a tendency to mislead the authorities?—It was not intended as such.

4689. You think not?—I think not.

4690. But your attention being called to it now, don't you think it rather an unfortunate way of describing him?—No. Am I not put in the same category, and I am not ashamed of it.

4691. What you mean is being in business?—I am not ashamed of being a business man. I was called a publican too.

4692. A wholesale publican—are you a dealer?—I am a dealer, as all others in the same business are.

4693. In point of fact, the public give you money, and you give them whiskey?—Indeed I do, and I wish they would take more, and keep sober.

4694. You don't care whether they are Orangemen on the 12th of July, or Catholics on the 17th of March?—I will be glad to take an order from you when you send it.

4695. You deal with whoever pays you best. Now, Mr. Lyle, do you believe that ever the peace of the community will be entirely preserved until these drumming parties are put down?—Decidedly not.

4696. Do you think their continued existence incompatible with the preservation of the peace?—I think your profession will be injured if they are put down.

4697. It will injure commissioners, barristers, attorneys, and other common people like them?—Yes.

SEVENTH DAY.

August 23.

Alex. M'Kenzie
Lyle, esq., J.P.

SEVENTH DAY.

August 23.

Alex. M. Kenzie
Lyle, esq., J.P.

4698. Do you think any lawyer has a chance of heaven at all?—I don't know. I think they try to make all the mischief they can.

4699. Do you think there is more harm done in the world by lawyers than by the sale of whiskey?—I don't draw that inference at all.

4700. Mr. Commissioner EXHAM.—If a summary jurisdiction was given to the magistrates to punish any man, woman, or child within a certain age, who was out with a drumming party—to punish them by fine or imprisonment, or both—do you think it would have a good effect in putting down drumming parties?—I think it should be tried, at least.

4701. Mr. *M'Laughlin*.—There is one question which I omitted to put, and which I would now wish

to ask through the Commissioners. It is this:—Does he conceive that it tends to inspire confidence in the magistrates amongst the Catholics, if the magistrates are found attending orange meetings?

Mr. Commissioner COFFEY.—We won't ask him to answer that question certainly.

Mr. *M'Laughlin*.—We have it in evidence that gentlemen did——

Mr. Commissioner COFFEY.—That is a matter I give no opinion on.

Sergeant *Armstrong*.—We have instances of first-class gentlemen attending the Fenian meeting at Cabra. They had nothing to do with the meeting, but went to look at it.

Constable Jas.
O'Neill.Constable *James O'Neill* sworn; examined by Sergeant *Armstrong*.

4702. You are a constable in the force?—Yes.

4703. Were you stationed at Donoghmore some years ago?—I was.

4704. Do you recollect an occasion on which there was something in the way of an Orange procession there—the day on which the men passed through Mr. Lyle's lawn?—I have a recollection of putting some parties through his lawn.

4705. It was you yourself who put them through it?—It was.

4706. Tell us the circumstances under which you put them through it—how it came to pass?—Oh, they were only a small party. There were not more than, I suppose, maybe a dozen.

4707. Tell us all?—They were going in the direction of Castlecaulfield. I met them at the back entrance gate of Mr. Lyle's, and I told them to go through the place, and not go round the corner at all.

4708. Where were they going to?—I know they were going to Castlecaulfield, to a meeting there.

4709. And you wished to interrupt them?—Not at all. I wanted them to go the short way, not to go through the town at all.

4710. You knew they were bound for Castlecaulfield, and you did not like them to pass through the town of Dungannon?—Yes.

4711. What did you say to them?—I told them to go the near way—to cross over Mr. Lyle's place, and go out at the other gate.

4712. Did they do so?—They did.

4713. Was that the only Orange procession you ever saw on Mr. Lyle's lawn?—I never saw any procession on Mr. Lyle's lawn.

4714. You would not call that a procession at all?—Oh, not at all. They were merely a straggling party.

4715. And you are the man that sent them through?—It was.

4716. Did you see John O'Neill taking a note of that to tell it in future years?—I did not.

4717. Did O'Neill ever complain to you—do you know John O'Neill?—I do.

4718. Did he ever complain of the Orange walk through Mr. Lyle's lawn?—No, he did not.

4719. Did you ever see any bonfires on Mr. Lyle's lawn on the 1st of July?—No, I never did.

4720. Or on the hill at the back of the house?—No, I have no recollection that I ever did.

Cross-examined by Mr. *M'Laughlin*.

4721. What is your name?—James O'Neill.

4722. As common a name as *M'Laughlin* in Inni-

shoven. Did you ever send a party of Orangemen through any other body's lawn at all?—I never did.

4723. Do you think you will do it again if you get the chance?—A man does not know what he will do.

4724. The reason you did not let them go through the town was, of course, to prevent the risk of offence to those in the town?—Well, it was principally.

4725. You thought they would be offended?—Of course I did not like to see them go through the town. I'd sooner they would go round the short way.

4726. Do you conceive that those things are a disgrace to the townspeople?—They are.

4727. And ought to be put down?—Certainly.

4728. And you thought you might take the liberty of sending them through Mr. Lyle's grounds instead?—All the place was open. It is a good many years ago—I dare say six or seven years ago—maybe more. It was shortly after I went there.

4729. As to this affair of flags on the church, do you think it tends to keep up bad feeling?—It does, of course.

4730.—You have not been able to prevent them from doing that?—No.

4731. Did you try at all?—We did.

4732. And failed? Now, you are an experienced man; how long have you been here?—How do you mean?

4733. How long have you been in this locality?—I daresay seven or eight years—no, about seven years.

4734. Where are you now?—In Dromore.

4735. It is in Tyrone?—It is.

4736. These drumming parties were in your time?—They were.

4737. How long is it since you left this?—I daresay it is three years or so—perhaps going on four.

4738. Were you here in 1865?—I was in Donoghmore.

4739. That is some miles from Dungannon?—Yes.

4740. You agree with everybody else that these drumming parties ought to be put down?—I do, certainly.

4741. As dangerous to the public peace?—No doubt of it.

4742. Did you ever know a sensible man who had any doubt on the subject?—Well, I did not.

4743. Mr. Commissioner EXHAM.—I daresay they are a great annoyance to the constabulary too?—They are, your worship.

Examination of witness ends.

Mr. James
Brown.Mr. *James Brown* (affirmed); examined by Sergeant *Armstrong*.

4744. You are a manufacturer in Donoghmore?—Yes.

4745. And have a large number of operatives in your employment?—Yes.

4746. Of the humbler class; and many of them are Protestants?—Yes.

4747. You know Mr. Lyle?—Yes.

4748. Has he applied to you with a view to prevent, and have your co-operation in preventing, the display of Orange flags or any flags from the church on the 12th and 1st of July?—He expressed to me great dissatisfaction at the fact that they were put up without

his knowledge, and endeavoured to influence me to prevent those men whom I knew to be Orangemen from making displays of any kind.

4849. He has applied to you in that way?—He has.

4850. Did you apply to those men not to do it?—Indeed I always did.

4851. Before his application?—Yes.

4852. And in consequence of his application?—Yes.

4853. Did you beg of those men not to allow it to be done, or not to do it?—With regard to the putting up of flags I don't think I did, because it had occurred before he spoke to me, but I frequently used my influence to endeavour to prevent them from taking part as Orangemen.

4854. Did you find it very effectual?—I am sorry to say it was not effectual.

4855. You are not only an employer but you are a paymaster, and have men in your employment, and can discharge them. Have you made private appeals to them to desist from drumming and marching and things offensive to their neighbours?—I have.

4856. Has your advice been taken?—Well, it has had an effect to a certain extent, but not to the full.

The sensible men were affected by my advice, the others were not. SEVENTH DAY.

4857. Then there were some who were not affected by your advice?—There were.

4858. They were obdurate in their own opinions?—Yes.

4859. And you in good faith and sincerity gave that advice?—I did indeed.

4860. Is it your opinion that these drumming parties ought to be put an end to?—We cannot hope for peace without it. Theoretically I would rather that all were permitted to make displays, if the opposite party would bear with them. The freedom of the subject would not be interfered with in that way. But having regard to the peace of the country, I think we cannot hope for it without putting them down.

4861. Mr. Commissioner EXHAM.—How long have you been at Donoghmore?—Since I was born—a good while now.

4862. Have you ever observed anything in Mr. Lyle's conduct calculated to encourage those drumming parties?—Oh, no; he has invariably desired that they should not walk or make demonstrations of any kind, as far as I could know of him.

[Not cross-examined.]

The Rev. James M'Neece sworn; examined by Sergeant Armstrong.

Rev. James M'Neece.

4863. You are a Protestant clergyman?—I am.

4864. Perpetual curate of Donoghmore?—Of Upper Donoghmore.

4865. It appears that flags have been displayed on certain anniversaries from the roof of the church, or some part of the top of the church?—They have, during the last three years.

4866. Had you anything to do with it?—No.

4867. Did you do what you could to prevent it?—I did, morally.

4868. Did you apply to the people that you thought were instrumental in those exhibitions, asking them to desist from making them?—I did.

4869. Did they in any case promise to you that they would not?—They did.

4870. But still it was done?—It was done.

4871. Against your advice and remonstrance?—It was.

4872. Did Mr. Lyle, the magistrate there, apply to you to interest yourself in preventing those displays?—He did. It was perhaps at his instigation that I used such strong language as I did to the authorities with whom I came into contact in reference to this matter.

4873. Did you use strong language?—I certainly did, both in public and in private; so strong that I got into rather bad odour with some of my own people, and I was pronounced in the neighbourhood a full-blown Radical, which I repudiate.

Mr. M'Laughlin.—You have no chance of salvation after that.

4874. Sergeant Armstrong.—When you say in public, I presume you mean in discourse from the pulpit—taking that opportunity with your congregation?—Yes.

4875. And in private as well. Still they floated the flags in spite of you. Did you regard Mr. Lyle's overtures to you and his request as sincere?—Perfectly honest.

4876. Is he in the habit of encouraging Orange displays or the reverse?—Quite the reverse.

Cross-examined by Mr. M'Laughlin.

4877. It is not true that you are a full-blown Radical?—Quite the reverse.

4878. Even to any extent true?—No, I belong to the old Whig school.

4879. Quite right. They are the people that get all the places. You are sure you have honestly done everything you could to discourage those displays?—I had. I may just mention one or two facts to the judge. We had no flags displayed on the church until 1869. Mr. Lyle then in some way discovered that certain parties intended to erect a flag on the church, and he asked me to use my influence with the people to induce them to

abstain from doing so. I did so. I met certain of the leaders of the Orange party, and they promised me that they would not erect the flag. I told them that Mr. Lyle was very much opposed to it; that he would be regarded by outsiders as approving of this, whereas he altogether disapproved of it, and that he would take it as a personal favour if they abstained from putting up this flag; that he and his family had contributed largely to the erection and enlargement of the church, and that it would be a very bad return to him if they placed him in a false position, and perhaps ultimately got him into trouble. Some of the people, I believe, were influenced by my representations, and promised honestly to abstain from putting up the flag. I may mention that I was rather outwitted, for when I was in play with one party another party absolutely put up the flag, and these same people coming to our little conference I addressed myself to them, and they promised most faithfully that they would not put up the flag; but the fact is that they had done it already, and to my astonishment the flag floated there next day. I think it also my duty to say that my exhortations to the people have been in vain, and very much in vain, for this reason, that when I urge them to abstain from party processions or the erection of party emblems, they answer me that party processions are permitted in Dublin and elsewhere in the provinces, and that it would be very unjust to prohibit them and permit other parties to do as they listed. My private opinion is that any act against processions or party emblems will be wholly inoperative which does not include all parties and take cognizance of all parties. If such an act is passed with regard to any one locality, that act will be either openly violated or evaded. That is my opinion. I have nothing more to say.

4880. Allow me to ask—for this is very important evidence—what is the reason you think it will be wholly inoperative here?—I have already told you, so that if offensive processions, such as I myself have observed in Dublin, are not put down, the feeling here of antagonism and sense of injustice in respect of any such act will be so strong that the act will be either openly violated or evaded; and they can evade every such act.

4881. Of course you understand how the laws are administered here, as a gentleman of education and experience?—I do.

4882. Of course you know it would not be the common unwashed multitude of Orangemen, if I may use the expression, that would administer the law, but somebody else?—Certainly not.

4883. And your attention being called to that, you

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Rev. James
McNeece.

are still of opinion that the law would be either openly violated or in some way evaded?—I do, for this reason, that if they were not permitted to go out with fifes and drums there would be nothing to prevent them from going out with harmoniums, or rather accordions, through the country, and singing any party tunes that they like.

Mr. Commissioner COFFEY.—Supposing that this system continues, and that, as you say, the law of the land is openly violated or successfully evaded in this locality, and supposing the result of that to be, as has been sworn here, that counter-demonstrations will be got up, and that you will have counter-drums and counter-fifes, and counter-harmoniums.

Witness.—Concertinas I should have said.

4884. Mr. Commissioner COFFEY.—What would you say would be the inevitable consequences of that state of affairs?—Utter confusion.

4885. And violence?—Violence.

4886. And turbulence?—And hence it is that my personal feeling is in favour of the strongest act.

4887. And defiance of all authority. Assuming your statement to be accurate, are you of opinion that if the law be violated and evaded elsewhere, that is an excuse for its being violated and evaded here?—I don't think it is an excuse at all, sir, but I merely state the feeling of the people. That there is a partial administration of the law.

Mr. Commissioner COFFEY.—I am very much afraid

that doctrines of that sort are not calculated to produce order and regularity.

Witness.—I don't encourage the people in these views—the very reverse. I merely give expression to what is the popular feeling.

Mr. Commissioner EXHAM.—It is better for them to obey the law, and leave it to the Executive to enforce elsewhere the responsibility that rests on them.

Witness.—I should like to see the law supreme.

Mr. Commissioner COFFEY.—Well, we won't see it supreme if it is supposed that because it may be violated elsewhere—assuming that it is—that is any excuse in the world why the law of retaliation is to go on through the country. If the law be partially administered, evaded, or violated elsewhere, the responsibility of that must be thrown on the Government and the action of Parliament; but it is no excuse why the law should not be successfully vindicated here and elsewhere.

Witness.—I refer, sir, to any new enactment that might be made, rather than to the existing law.

Sergeant *Armstrong.*—I don't understand you to say that you ever encouraged these doctrines of retaliation or set-off?

Witness.—The very reverse.

4888. But you state the prevalent feeling amongst the lower orders of the people, and that they met your argument by this observation?—In this way.

(Examination ends.)

James Greer
Richardson,
esq., J.P.

James Greer Richardson, esq., J.P., having affirmed, was examined by Sergeant Armstrong.

4889. I believe you are one of the Society of Friends?—I am.

4890. About how long have you been a magistrate?—Nearly two years.

4891. Do you disapprove of these drumming parties, as disturbing the peace of the country?—I do, certainly.

4892. Have you always set your face against them, both before you were a magistrate and since?—I did by advice and otherwise.

4893. Have you personally advised people that you thought you might have influence with for the purpose of stopping them?—I have, repeatedly.

4894. Have you done that in good faith and with a desire to secure the public peace?—Yes.

4895. Have your exertions and advice been successful?—No, I am sorry to say they have not.

4896. Do you believe there is a low class of men indifferent to your advice, and who won't take it?—I do; and that they would not take anyone's advice.

4897. Do you believe that the strongest law is necessary and desirable in order to meet such people as that?—Yes, I do think so.

4898. Would you approve of a power being given to magistrates to put an end to, by treating them as illegal, any sort of drumming parties in this neighbourhood?—I should, in all places.

4899. You have occasionally attended on the bench?—I have.

4900. You are not a lawyer, I believe?—No, I know very little of the law.

4901. You are a man of peace?—Yes; I am a man of peace.

4902. Have you to the best of your judgment honestly endeavoured to administer the law since you were appointed?—I have to the best of my ability.

4903. Have you, to your knowledge, as far as you can understand your own mind, been guilty of any act of partiality or unfairness in the investigation of any case, party or otherwise?—No, I cannot think of any case.

4904. Have you observed the conduct of your brother magistrates?—I have.

4905. As far as you are associated with them?—Yes.

4906. Did you observe Captain Ball on the bench?—I did.

4907. Do you regard his conduct as impartial and upright?—I do quite consider that it is.

4908. And that the conduct of the other magistrates has been equally impartial and upright?—All equally so.

4909. Do you all appear to act harmoniously, as far as you observed, for the common good in the public service?—Yes, most cordially; that is my impression.

4910. Did you ever get a hint from Mr. Ball, or anybody else, that you were going out of the line of your duty or forgetting anything or omitting anything?—No.

4911. Until the occurrence before the police inquiry, you did not know of any imputation upon you, as a body or individually, in the discharge of your duties?—No; I was quite astonished when I saw it afterwards in the papers.

4912. I presume you are not an Orangeman?—No, nor never attended an Orange meeting.

Cross-examined by Mr. *McLaughlin.*

4913. How long have you been appointed?—Nearly two years.

4914. According to our system of computing time, that would be some time in the year 1869?—I think it was in January, 1870.

4915. Therefore you know nothing about the affair of July, 1864?—No.

4916. Or of the 12th of July, 1865?—No.

4917. Or of the 12th August?—No; I don't know anything about those affairs.

4918. In point of fact, you know nothing of anything prior to 1870?—No.

4919. You personally know nothing of the Killyman funeral case?—Not personally.

4920. And you know nothing personally of drumming parties in Perry-street, Dungannon?—No.

4921. You were not present on the bench in May, 1869, when a particular question was not allowed to be put—you were not a magistrate at all then?—No.

(Examination of witness ends.)

Armytage Lennox Nicholson, esq., J.P., sworn; examined by Sergeant Armstrong.

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Armytage
L. Nicholson,
esq., J.P.

4922. How long are you a magistrate?—I received the commission of the peace in January, 1865—about six years ago.

4923. Were you here on the 12th July—the occasion that has been referred to?—No; I was in Derry.

4924. About what time did you get back from Derry—what was the length of your sojourn there?—I think I got back about the end of the month. I was there with the training of my regiment, which was over about the 25th of July.

4925. You are attached to a militia regiment?—I was at that time; I was on duty.

4926. At what time did you get back?—I could tell you the date from my book; it was about the end of July.

4927. Where do you reside?—At Lisdhu, about two miles from here.

4928. Do you know anything of the apprehended disturbance on the 7th August here?—No.

4929. I suppose it was all over before you heard of it?—It was; it was in the evening. I was in town at petty sessions that day, and there was nothing mentioned of it at all.

4930. You did not foresee it?—Not the least.

4931. It was unexpected, apparently—I suppose you knew, or did you recollect that Mr. Coulson was here in reference to it?—I don't recollect it of my own personal knowledge.

4932. Was Mr. Brooke here?—He was.

4933. Do you disapprove of these drumming parties—Certainly; drumming parties in general, I certainly disapprove of.

4934. And you think they ought to be put down?—Yes; I wish they were.

4935. Would you be anxious that a clear law should be passed enabling the magistrates to act, and rendering illegal every variety of drumming party?—Very anxious, indeed, that a clear law should be given to us without any—

4936. Without entering into metaphysical discussions as to their tendency, or as to whether they are likely to lead to a breach of the peace or not, would you wish for a peremptory law to put them down?—Yes; a clear law.

4937. Were you ever an Orangeman?—Never.

4938. You are not an Orangeman?—No.

4939. Is there anything Orange about you?—Well, there may be; that's for the public to judge, and not me.

4940. Except the colour of your hair, you have no sympathies with it?—I have nothing to say to that.

4941. Have you, according to the best of your judgment, honestly endeavoured to carry out the law, sitting on that bench, in party cases, and in every other case?—Certainly; I have always endeavoured to act honestly, and always will.

4942. Have you co-operated as you ought to do with your brother magistrates, and with Captain Ball since he came here?—Yes; up to the 23rd of June I co-operated with him most cordially in every way, and since that I have co-operated with him officially in every way—we were on terms of friendship before that date.

4943. Had you received any intimation from him of dissatisfaction with your proceedings in any shape or way, as a magistrate?—Nothing whatever, till his evidence was told to me that evening.

4944. You had confidence in him and thought he was dealing confidentially with you?—I had; perfectly.

4945. He appeared to co operate with you in all respects on the bench?—He did.

4946. I believe you acted at the first petty sessions after the 7th of August, 1865?—Yes; the 24th, I think it was. I find from my diary that I was here that day.

4947. Who were the other magistrates associated with you?—Indeed I am not sure; the Order Book will show.

4948. We know that it was Mr. Coulson who took the informations—was Mr. Burgess with you?—Well,

I can't remember; it is the 24th of August that you refer to?

4949. Well, at all events, you returned the informations to the quarter sessions?—Do you refer to the 24th of August, 1865?

4950. I do, the 24th of August, 1865?—Yes; as well as I remember, Mr. Coulson sent them direct. They did not come to us at all.

Mr. Commissioner EXHAM.—Mr. Coulson, I think, sent them direct.

Sergeant Armstrong.—They went to the assizes, and we know the result.

Mr. Commissioner EXHAM.—Because Mr. Hayden went bail for them before Mr. Coulson.

4951. Mr. Commissioner COFFEY (to witness).—You were not in attendance at whatever investigation was held on the 16th August?—No, I was not here.

4952. By whom was that held?—I believe by Mr. Coulson alone. Possibly Mr. Brooke may have been here.

Cross-examined by Mr. *McLaughlin*.

4953. In point of fact you were not in Dungannon at any of the periods to which this particular matter relates?—I was not in Dungannon on the 12th. I was in Dungannon at the petty sessions on the 7th; but I left the town after the petty sessions were over.

4954. On that occasion there were two parties—two firing parties equally culpable, we will say—and that's rather against ourselves—and you have heard it sworn that eighteen on one side were arrested and sent for trial, and that the others were allowed to go scot free. Would you consider that fair? I have heard that sworn; and if it be substantiated I consider it not to be fair.

4955. You would not consider it too strong language to pronounce that a lamentable miscarriage and failure of public justice?—Well, taking Mr. Hayden's evidence to be perfectly correct in every way, I would consider that it was a failure.

4956. And I suppose, from your knowledge of mankind you will admit it to be not unnatural that a fact like that should tend to inspire a want of confidence in the minds of Catholics with reference to the magistrates in party cases?—Taking these to be facts I dare say it might do so; but knowing that Mr. Coulson conducted the business, I am sure he conducted it honestly and impartially.

4957. Mr. Commissioner COFFEY.—You won't judge an absent man?—No, I can't do that.

4958. You will assume that he did everything correctly.

Mr. *McLaughlin*.—I did not say a word about Mr. Coulson.

Witness.—He was a very experienced man, and I am sure he would have done everything that was right and proper.

4959. Mr. *McLaughlin*.—That being so, you are not astonished, however, at an impression being on the minds of the Catholics that they were not getting fair play, assuming those to be the facts?—Yes, as regards that case.

4960. And would not that tend to give significance to those drumming parties, indulged in by persons of the same views as those that escaped on that night—would not those drumming parties acquire significance to Catholics from that?—Well, I don't understand exactly your words "significance to Catholics." I take each separate case by itself. But, you know, a number of instances made up an aggregate?—That may be. I only say that may be.

4961. Now, you are setting yourself against me I see. Don't you know this—that these drumming parties are regarded by Catholics with more serious feelings in consequence of those outrages that have occurred from time to time, such as that of the 12th of July, 1865, and the like, assuming that the same party that took part in the drumming took part in the outrages—is it not natural that the Catholics should

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Armytage
L. Nicholson,
esq., J.P.

regard the drumming parties with very great apprehension?—Coming into the town I dare say it is—drumming through the streets. It depends upon where the drumming parties are altogether.

4962. Why, now?—Because there may be private parties—private small collections in quiet localities that can cause no animosity.

4963. That's where there are only a few Catholics?—No, no, where there are no Catholics at all. On quiet roads where there are very few houses.

4964. Tell me any road of that class except Northland-row, in your experience?—Northland-row is not a road.

4965. There are houses on one side of it and trees on the other—it is as much a road as a street?—I don't refer to it.

4966. Tell me any part of the country where no Catholics reside?—I am not a census enumerator to be able to tell you that; but there are localities.

4967. Is it so in the streets?—Will you allow me to finish.

4968. I am sure you will do it whether I allow you or not?—There are places in which very few Roman Catholics reside, and there are places in which very few Protestants are resident.

4969. Is there any place where the residents are confined altogether to one party?—Not altogether.

4970. Could you beat a drum in any place where it could not be heard by a population of Catholics?—I dare say you could not. You will hear a drum a long way.

Mr. Commissioner COFFEY.—Mr. Newton's explanation of that appears to me to be most accurately correct and worth repeating for distinction's sake. He says he believes it would not be calculated to produce danger

to the public peace where the minority is infinitesimally small, as they would not come into contact with a large number; but he says it would produce exasperation and annoyance to those few.

Mr. Commissioner EXHAM.—Exactly; and he says he would have even those put down.

Witness.—I would like to see them all stopped in general terms.

Mr. Commissioner EXHAM.—He does not want offence to be given to any person.

4971. Mr. *McLaughlin*.—Do you remember the affair in 1868 at Union-place?—Yes.

4972. Were you there?—I was.

4973. Why didn't you arrest some one?—Because I did not consider that there was anybody to be arrested. The whole thing was over in seven or eight minutes.

4974. What did the "whole thing" consist of?—A party came home from Lisburn that day—they had gone out in the morning, and they went to their lodge-room in Union-place.

4975. Were there any stones thrown?—It was dark in the evening. I heard that one if not two panes of glass were broken; and I was told that they were broken by stones, but I did not see it.

4976. You knew the people of the locality?—I knew some of them.

4977. And holding the opinions that you do with reference to the inadvisability of these things you did not consider it judicious to tell the police to arrest anybody?—Certainly not.

4978. Sergeant *Armstrong*.—You thought it wiser to let it blow over?—Yes; the whole thing was over as fast as it would take a man to walk up the town. They walked straight on; they never stopped at all.

(Examination of witness ends.)

Mr. Winder
Lyle.

Mr. *Winder Lyle* sworn; examined by Sergeant *Armstrong*.

4979. You are Mr. *McKenzie Lyle*'s son?—Yes.

4980. I believe you were at home during the vacation of 1869—two years ago?—Yes.

4981. From school?—Yes.

4982. Do you recollect on the 1st of July doing anything in the way of a torch?—Yes.

4983. Tell me what did you do?—I made a burning torch about so long—(describes)—of tow and petroleum.

4984. What did you do with it?—I carried it in my hand on a long stick—just kept it in my hand.

4985. Where did you go with it?—To the hill above the house.

4986. Was this at night?—It was.

4987. Did your father know anything about it?—Nothing whatever.

4988. Was there anybody with you?—A servant man.

4989. Anybody else?—No one.

4990. Was there any crowd?—No people.

4991. Did it appear to you, as far as you could observe, to attract any attention?—No, not as far as I observed.

4992. Did you ever repent that?—No.

4993. Was there ever any bonfire blazing, or at all on that hill to your knowledge except the one?—None.

4994. You never saw a handsome bonfire there?—Nothing.

4995. You say your father did not know of it at the time?—He did not.

4996. Since this inquiry began he inquired about it?—Yes.

4997. Did you then tell him?—Yes.

4998. As far as you know, that was the first time he heard of it?—Yes.

4999. Do you know whether, from his general

conduct and conversation, he always disapproves of orange processions and drumming parties?—Yes.

5000. And of putting flags on churches?—Yes.

5001. Is that what he inculcates to his neighbours and his family?—Yes.

Cross-examined by Mr. *McLaughlin*.

5002. And that has always been his opinion since you have known this gentleman?—Yes.

5003. You have always known it to be his opinion?—Quite so.

5004. And knowing it to be his opinion, what were you kindling that affair for on the night of the 12th of July?—Just to carry it in my hand.

5005. Mr. Commissioner COFFEY.—As an exhibition of your own feelings?—Yes.

5006. Mr. *McLaughlin*.—The Sergeant asked you whether or not anyone saw it. I suppose you were anxious that nobody should see it?—I did not care.

5007. And that was the reason you exhibited it—in order that nobody should see it?—No, sir.

5008. Were you anxious that it should be seen?—I did not care who saw it.

5009. You thought there was nothing wrong in it?—

Mr. Commissioner COFFEY.—Well, I don't suppose he would do it now, because it compromised his father.

5010. Sergeant *Armstrong*.—Did Mr. O'Neill ever complain to you about it?—Never.

5011. Nor nobody else?—No.

5012. Mr. *McLaughlin*.—Will you do it again?—No; I will not do it again.

Sergeant *Armstrong*.—I hope the recording angel will drop a tear on that torch and extinguish it.

Constable *Michael Maguire* sworn ; examined by Sergeant *Armstrong*.

SEVENTH DAY.

August 23.

Constable
Mchl. Maguire.

5013. Were you stationed at Donoghmore last year?
—Yes.

5014. Have you been long there?—Two years, last June.

5015. Did you, in the discharge of your duty, have a sharp look out on the occasion of the anniversaries of the 1st of July, and the 12th particularly?—Yes.

5016. Did you ever see a bonfire of any sort on a little hill above Mr. Lyle's house at Donoghmore on the 1st of July?—I never did.

5017. Were you out on duty on the night of the 1st of July, 1870?—I was.

5018. Were you on that little hill at the back of his house?—Yes.

5019. Had you any of the force with you?—I had.

5020. Reconnoitring or observing?—We were just round seeing the state of the country.

5021. Was there any bonfire there?—There was not.

5022. Nor anything like it?—None.

5023. Do you think there could have been a bonfire there at any other time of the night without your observing it on the 1st of July last?—I don't think there could.

5024. Have you come into personal intercourse with Mr. Lyle as a magistrate of the neighbourhood?—Yes.

5025. Has he expressed to you his opinion about drumming processions and party displays?—He did, several times.

5026. Has he impressed on you the importance of being active to put them down, and discourage them?—He did.

5027. In general terms?—Yes.

5028. Did you ever know him to give them any sort of encouragement?—No; but the reverse, while I was there.

5029. Do you know Mr. John O'Neill, that lives near that?—I do.

5030. Everything, I suppose, is a party matter down here. Are fires on St. John's Eve party matters in this country?—Well, I never heard them remarked at.

So much the better. I am glad of it.

Cross-examined by Mr. *M'Laughlin*.

5031. Now, we have put out the fires on St. John's Eve, thank goodness. How long have you been stationed in that place?—Two years next June.

5032. So that, in point of fact, it is true what you said to the Sergeant that you had opportunities of observing?—Well, I had.

5033. And you know the habits of the country well in reference to these party anniversaries?—Well, I am very well acquainted with them since I went to that part.

5034. Isn't it a fact that your experience of the locality extends over two "firsts of July" only?—Yes, that's all.

5035. Where did you come from originally?—Where did I come from originally?

5036. Ay?—I came from Armagh.

5037. That's your native place?—Yes.

5038. What part of the county, might I ask?—Beyond Middleton.

5039. I suppose you think those drumming parties very dangerous?—Well, indeed I don't think them dangerous.

5040. What age are you?—Well, I am about forty-four.

5041. And you have been a good while in the force?—Above twenty-five years.

5042. That's a quarter of a century nearly. What's the reason you don't think them dangerous?—Why, I don't think them dangerous except there's a real row amongst them. From what I have seen of them, I would not think them dangerous.

Mr. Commissioner COFFEY.—Rather amusing and harmless than otherwise.

5043. Mr. *M'Laughlin*.—Except when there's a real row amongst them?—Yes.

5044. What would you call a real row?—Where two parties meet.

5045. And the one cross-examines the other with sticks. And, of course, anything that would be dangerous to the public peace, you, in discharge of your duty as Constable—is it a Constable or a Sub-Constable that you are?—I am a Constable.

5046. Well, in discharge of your duty as Constable, you would put down anything that would be dangerous to the public peace, wouldn't you?—I would; I would do my best.

5047. No man can do more. But then, these are not, you say, except in the circumstances that you mentioned, dangerous to the public peace?—Not what I saw, from my experience of them.

5048. You say you keep a sharp look out at the anniversaries. I suppose you never go to bed on the night of the 30th of June or the morning of the 1st of July at all? Did you ever go to bed at all during the night of the 30th June or the morning of the 1st of July since you came here? On the 1st of July I suppose you sit up all night?—The most part of it.

5049. Would you go to bed at one or two?—Sometimes we would go to bed later, and sometimes earlier, I might say.

5050. And these drumming parties not being dangerous to the public peace, you would not think it your duty to put them down until they became dangerous to the public peace, would you?—I would think it my duty to put them down if I could; but I, an humble policeman, could not put them down.

5051. You think they would be dangerous to the public peace when what you would call a real row occurs?—Yes.

5052. That is to say, when they begin to smash each others heads, and cut new entrances to one another's stomachs, and all that, you would think them dangerous?—They would be put down well, then.

(Examination of witness ends.)

Sub-Inspector *Thomas Smith* sworn ; examined by Sergeant *Armstrong*.

Sub-Inspector
Thomas Smith.

5053. How long have you been stationed in this place?—Eleven years.

5054. And you have been sub-inspector all that time?—Yes.

5055. I need scarcely ask you whether in the discharge of your duty you have been in constant communication with the magistrates?—I have.

5056. And you have been so, occasionally, with the resident magistrates, who occasionally come here on emergencies?—Yes.

5057. And I presume with Mr. Ball since his appointment to this place?—Yes.

5058. I propose as far as you can throw any light on the matters stated in the particulars, just to go through them chronologically. Do you know anything

of an Orange assembly near the chapel, opposite to the parish priest's house in July, 1864?—No, there was a casual thing, but there was no remark made relative to it. I know nothing of it.

Mr. *M'Laughlin*.—We have given evidence of it.

Sergeant *Armstrong*.—Of a slight and unsubstantial character.

5059. (To witness).—You know nothing of it?—Nothing of it.

5060. I regard it as quite unsubstantial. Were you here on the 12th of July, 1865?—I was.

5061. Would you just state who were in the town on that occasion?—Mr. Brooke, alone, said he would take charge of the town with twelve men; and twelve men were left with him.

SEVENTH DAY.

August 23.

Sub-Inspector
Thomas Smith.

5062. Was there any stipendiary magistrate who went elsewhere?—I accompanied Mr. Coulson and fifty men to Castlecaulfield.

5063. Had you received information of the possibility of some disturbance at that place?—I had, at Annamackeen, a short distance from that place.

5064. Was it in consequence of that information that Mr. Coulson and yourself and this large force went to that neighbourhood?—It was.

5065. Was that in pursuance of an arrangement arrived at by Mr. Coulson and the other magistrates?—It was.

5066. Who were left behind in the town here, when you went away?—Twelve policemen for duty, and Mr. Brooke.

5067. And Mr. Coulson and fifty men and yourself went to what was the supposed point of anxiety?—Yes, and Mr. Gunn, sub-inspector, and thirty men went to Coal Island.

5068. At the time you went in the morning, leaving the minor force in Dungannon, did you believe, as far as you knew, and did the magistrates believe that that was a force able to keep the town quiet and protect it? Was there any invasion—so to call it—of the town expected?—Oh, not at all; nothing of the kind. Perfectly quiet.

5069. In fact your attention was directed to the outlying districts?—Quite so, from the information I received.

5070. Did you believe that it was honestly given?—I did; it was sworn.

5071. And it was acted on in good faith?—No doubt.

5072. At the time you left the town in the morning you did not anticipate any disturbance here at all?—Oh, not at all.

5073. In the course of the day was there an intimation made to you, wherever you were, that something had occurred in Dungannon which rendered your return desirable?—My mounted orderly came from this with a verbal message from Mr. Brooke, about half-past two o'clock, to say that a drumming party had been attacked in Scotch-street, and that there was a reinforcement coming from Berna, where the general body had assembled on that day, and that unless we hurried in the town would be wrecked.

5074. The Orangemen were coming in from Berna?—Yes.

5075. Of course to have satisfaction in their own way for the interference with their friends in the morning. I take it for granted that that was the meaning?—That was it.

5076. Were there cars sent for to expedite your return?—Perhaps I may say that in consequence of the circumstances that occurred at Castlecaulfield, after we arrived there, and having little reliance on the party, who promised faithfully that they would not come in here—believing that they were the same party—we left twenty-five men with Mr. Alexander Buchanan, the other magistrate, who was agent of Lord Charlemont's property—and took twenty-five men with us here in all haste. We met cars and a bus half way—or not as far as half way—that were sent out to assist in bringing in the men. The men ran the whole way, and were here at a quarter past three.

5077. Having got the intimation about?—Half-past two.

5078. You made every speed into the town?—We came the shortest road.

5079. Your orderly was despatched by Mr. Brooke?—He was; he said so.

5080. When you got into the town was there any magistrate but Mr. Brooke, that you recollect?—Yes.

5081. Had Mr. Coulson come back?—Mr. Coulson accompanied me; and Mr. Brooke was here, and Colonel Knox, subsequently.

5082. Would you just give the Court, in your own way, your own narrative, as far as you observed, of the occurrences of that evening, of the disposition of the force, of the action of the magistrates, and of what

you did yourself?—When we arrived at the end of the town, out here, about twenty or thirty perches down from this court-house, we halted the cars and bus, and got the men out, and formed them. We hurried up the street, as we thought, from the information we received, that we would be able to catch the party coming in before they turned down Scotch-street at the head of the Diamond. As we passed into Irish-street it was perceived that the party had turned down Scotch-street; and we crossed Shamble-lane and turned down Sloane-street, so as to be able to cross them between this and the hotel, where Sloane-street comes in. The moment that we arrived there I formed the men in single rank and fixed their swords, and the other party that were in town subsequently joined us there.

5083. The other party of police?—Yes. The Omagh party advanced from Moon's hotel towards us. They were beating their drums violently, and were a large party, with spades, forks, shovels, scythes, sticks—in fact all instruments but firearms. Mr. Brooke, Colonel Knox, and Mr. Coulson got in among the party and endeavoured to dissuade them from enforcing their way. They actually caught the people and thought to turn them down to the Market-place, and into the Potatomarket; however, after a great resistance—stones, I must tell you, were thrown in great numbers. I was on horseback myself—I had not time to get off the horse and send him away—between the men with fixed swords and the stone-throwers.

5084. Mr. Commissioner COFFEY.—Where did the stone-throwing proceed from?—The Orange party. Three men of mine were knocked down, and two of them badly injured. Nine more were wounded less or more. They took hold of Mr. Brooke when they were endeavouring to force them down into the Potatomarket, and forced him against the men's swords, and the whole body forced their way up.

5085. Mr. Commissioner EXHAM.—Up towards the court-house?—Right in front, this way. They came up this way. We pursued them, fearing that they would get—knowing that the bone of contention was Shamble-lane. Some unfortunate things occurred some years before my arrival here, and I always understood that the Orangemen always held out that they would pass through Shamble-lane in spite of the people, and my object was to collect the men who were dispersed, and get up as quickly as I possibly could to Shamble-lane. Stones were thrown when we came to Shamble-lane in great numbers, from Shamble-lane. Colonel Knox and Mr. Brooke arrived at this time, and used their best efforts, with Mr. Coulson, to dissuade the people. When I turned about I saw them breaking the windows of Mr. Hayden's house. A man was there with a shovel or fork, and he was battering the windows at that time. My men were dispersed, and I wanted to re-form them there. A man named Reilly, a sub-constable here, was the first man I came up to. I asked him where was he going. He said he was making for the barracks, and I desired him immediately to turn back and fall in, and the remainder of the men to fall in with him. The party passed on through Shamble-lane. I hear that two or three passed into Scotch-street, but the greater body turned down Sloane-street. My men pursued them. They went on to Carr's-row, as it is called, breaking windows and smashing the place as they went along, and they passed on in that way out by the Moy-road, the direction they came from. The object the magistrates had in view was to protect Shamble-lane, so that they should not return and get in there again; and Mr. Coulson directed that I should form a guard at either end of Shamble-lane, which I did. Much injury was done to Mr. Hayden's house in the first instance, to two or three houses in Shamble-lane and Sloane-street, and also to Mr. Hughes'—the hotel—and to three or four houses down Carr's-row. They passed out, and nothing further occurred there.

5086. About how many were in the crowd?—About two thousand—upwards of two thousand. I calculated from the size of the street and my own knowledge of

such things. So formidable an array of a mob, as I might call it, I never saw, and I have seen a good number.

5087. Sergeant *Armstrong*.—Did you observe Mr. Brooke, Colonel Knox, and Mr. Coulson active in endeavouring to repress them?—Most decidedly.

5088. From forcing their way?—Most decidedly—physically and by their expressions.

5089. Did they expose themselves to actual danger?—They did.

5090. The police force were all in danger, I understand?—Everyone.

5091. Mr. Commissioner *COFFEY*.—A great many of them were hurt?—Some of them were hurt.

5092. Sergeant *Armstrong*.—We know that all that was followed by informations?—Perhaps you would allow me to mention that those men that were with me from Castlecaulfield were county of Dublin men, who knew nothing about this country whatsoever. They did not know the people who composed the party. The only men who knew them were the twelve men who remained behind with Mr. Brooke, and who took the names of the parties that were returned, and were subsequently brought up.

5093. Mr. Commissioner *EXHAM*.—They were extra police, drafted down from the depot?—Yes.

5094. Sergeant *Armstrong*.—I believe they are sent down from the Phoenix Park on those extraordinary occasions?—Generally so.

5095. And, unfortunately, they did not know the people, and it was the twelve men who were here and knew them that did give the names?—It was.

5096. And we know what was done, and we know the result of it. Well, I will ask you in general terms do you recollect anything else in connexion with that 12th of July night that you think it necessary or proper to inform the bench of?—On that night there was a good deal of excitement, of course, in the town, as was natural, in consequence of the number of people that came up into the Diamond. Colonel Knox was there endeavouring to dissuade them, and his hat was knocked off with a stone; and when I came, after getting something to eat, after being out all day, returning about eight or nine o'clock, I heard that a stone hit Miss Cunningham's window, and I went over and seized the fellow, and Colonel Knox held him.

5097. You heard of the disturbance on the night of the 7th of August?—I did.

5098. That followed that?—I did.

5099. Did you anticipate or foresee any disturbance, or was it a sudden inroad?—It was, perfectly sudden. We had not the slightest notion of it.

5100. You had no previous intimation of it?—None whatever.

5101. Be good enough to state as much as you know about that occurrence that night, what magistrates and police force were in town, and the whole matter?—The petty sessions were held here on that day; everything passed off perfectly quietly, and we had not the slightest notion of anything occurring whatever. One of my men came to me and told me that a Castlecaulfield party and other parties were coming in a straggling kind of way, firing shots along the New-road. I desired two or three men to go and see, and bring me word exactly what was going on; and I went up to the barracks and got the remainder of the men that were there.

5102. Mr. Commissioner *EXHAM*.—How many had you that day?—Altogether we had eleven or twelve. I am not certain exactly, but the general number is twelve. I think we had eight men available. This party passed in a straggling kind of way, firing shots coming in along the New-road, until they passed the lower part of the town by the railway, and got to the lodge at Miltown. This was between nine and ten o'clock, or it might be ten o'clock. I fancied that this band would beat back by Moon's hotel, and we heard the drums beating at the lodge. They did come up that way. I drew the men's particular attention to this, that they should identify and take down the name of everyone they could. I told the head constable,

the constables, and the other men; and, in fact I desired them to stand against the lamp-post that was there, and to take care to identify every man that passed that they could. The crowd was so great that came up from the lodge, together with the dust that was flying, and the darkness of the evening, that it was quite impossible to do so. I did everything myself that human nature could do to recognise the men, and I could not. They passed on this street to this corner, and we were following them. A couple of stones were thrown from the opposite side next the school-house. This party passed down, and a couple of stones were thrown after them. When they got down to the school-house, I heard two shots fired. Immediately as we heard the shots fired, a cry was raised that the Orangemen were coming to Irish-street, and were going to attack the Catholic party. I hurriedly took the men to Irish-street and Shamblane, and sent men to Mr. Brooke where he was left at Miltown. Mr. Brooke subsequently joined me; and in fact the Catholics, I must say, had no fault in the matter, for they were, I think, frightened so much that they armed themselves, and if the Orangemen did attempt to come in, they would certainly resist them, and defend themselves. Several of them begged of me to remain with them to protect them. I did so until it was, I think, a quarter past twelve o'clock. Mr. Brooke also came to me and remained with me, and traversed the streets up and down; and when a stick had been thrown amongst the men where they were opposite to Hayden's, by some boy or person—there were a great number of boys in the street—it was considered not advisable to arrest that boy, nor was he arrested. I asked Mr. Brooke then, if it was desirable that we should take the names of those parties, and he said, "most decidedly." Then the names of twenty were taken that night. Subsequently seventeen of them were sent for trial. There was another, who was in Newry, making eighteen.

5103. Mr. Commissioner *COFFEY*.—What were the informations taken against them—for what were they arrested?—For appearing armed, and riotously assembling that night; but in reality it was to protect their houses and places from the dread—

5104. To protect themselves from a similar scene occurring?—Yes, precisely.

They were most entirely justified in doing so.

Witness.—They fired out into the street as we passed. When we passed on, there would be a shot fired from a window and we would not know who did it, nor did not ask, because I really considered that the Catholics on that occasion considered that the Orangemen were coming to attack their places, and do as they had done on the previous occasion, and they were determined to protect their lives and property. Some of them spoke to me on the same subject.

5105. Sergeant *Armstrong*.—From your own observation of what was going on, did you approve of the direction given by Mr. Brooke to make those arrests?—He did not desire them to be arrested.

5106. What did he desire?—Their names to be taken.

5107. Did you approve of their being summoned?—Certainly; I had no option, but to do what I was desired.

5108. Did you believe, having regard to the circumstances, that it was a proper and prudent thing to have them summoned?—I think it was desirable at the time.

5109. To vindicate the law, as far as it could be vindicated?—My reason for that would be, I think, where the opposite party were summoned for similar offences. Those were the expressions of Mr. Brooke; he considered that they should be brought up also.

5110. The opposite party were summoned for the 12th of July night—what I want to know is, were you able to identify any of the Orange mob who rushed up the street in the way you say?—Most decidedly not; I say positively that I did everything I could myself and I could not.

5111. You had men stationed at the lamp-posts?—Yes, at the corner; I watched them carefully myself.

5112. Mr. Commissioner *EXHAM*.—Were they country people or townspeople?—They were country people.

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Sub-Inspector
Thomas Smith.

SEVENTH DAY.

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Sub-Inspector
Thomas Smith.

ple; there was one man in particular who was, I believe, the principal person connected with it, but I could not identify him, nor any of my men, though I asked everyone of them.

5113. Sergeant *Armstrong*.—He appeared to be a prominent person?—On all those occasions.

5114. And a countryman?—Yes.

5115. Now, it is scarcely necessary to ask you, but I do so as a matter of common justice—the result was, that a number of Catholics were summoned and informations were taken against them, and they were sent on for trial?—That was it.

5116. And none of the Protestant, or Orange party?—No.

5117. As far as you were concerned, did that difference or distinction proceed from any partiality or leaning?—Most decidedly not; I had not an idea of anything of the kind—not the slightest at any time, on my oath.

5118. Mr. Brooke is in his grave; did anything occur to induce you to suppose that he had any leaning?—Nothing; he never mentioned a syllable about a thing of the kind at any time to me.

5119. Did you regard his exertions on that night as conceived in good faith, and carried out to the best of his judgment?—Decidedly.

5120. You say that the Catholics—and I don't wonder at it—armed themselves, and got ready to prevent a repetition of the circumstances of the 12th of July?—Yes.

5121. Very natural—was there what you call that appearing armed going on all night?—Up to between twelve and one o'clock.

5122. By what time was the town quiet?—At a quarter past twelve we were quiet in Irish-street; we then had to go in another direction.

5123. Were you on foot all night?—Until it was clear daylight in the morning.

5124. You say you had about eight men available; you must always leave an orderly or two in the barrack?—Yes.

5125. And you exerted yourself to the utmost?—Unquestionably.

5126. Do you recollect anything of the Orangemen going to Donoghmore in September, 1866?—I don't know anything of it; I was in Dublin, at the depôt, at that time.

5127. Who was the head constable here in 1865, on the occasion we have been speaking of?—He is dead.

5128. Who was he?—Morrison.

5129. Was Collins here at that time?—He was.

5130. He is here now?—He is here now. In 1865 Head Constable Fitzpatrick was here.

5131. Do you know anything of a drumming party who were drumming on the Killyman direction, about a quarter of a mile from the chapel when the Catholic service was going on?—Nothing more than to hear of it and inquire into the particulars of it the next day.

5132. Were you able to discover anything about it?—That was the case in which we brought up three parties who were accused. We had five witnesses, and they were not able to identify the parties sufficiently. Informations were sent up for the law adviser's opinion, and he said there was no case to go for trial.

5133. At any rate it was nothing of very great consequence it would appear. It was a quarter of a mile away, the witnesses say, and nobody could be identified?—No.

5134. Three persons were charged and five informations taken?—Yes, if that was the case; but there were two cases connected with chapels; one was of the 1st of December, 1865.

5135. 1867?—Well 1867. That was the case in which the three were charged with breaking the windows; but there was a previous case of the 1st of December, 1865, in which a drumming party came from the direction of Moygeshill to the cross-roads and beat their drums there; and Head Constable Fitzpatrick, and Collins, who is head constable now, went

down to see about this drumming party, from my general directions to them that they were at all times to attend and see if they could identify any of those parties in order to report them to the magistrates. They went down—they were not sent for. I make use of that expression because it was remarked here in a previous part of the inquiry—

5136. They went down under your orders?—Yes.

5137. Do you recollect on the 1st of July, 1868, the occasion of the Orangemen coming back from Lisburn—I do.

5138. What occurred according to your own observation on that occasion?—The orange lodge was the very next house to mine, except one; and they were not, from the best information that I could receive the night before, to have left the lodge until they were to go in the train next morning at a quarter past nine. To give them time for that I desired the men to be ready at eight o'clock, in order that we might have every one of the names if anything should occur. They took us by surprise and left at six o'clock in the morning or before it.

5139. Mr. Commissioner COFFEY.—And stole a march on you?—They did, and went away to Lisburn, I presume, for they went to the railway at Trew and went on to Lisburn, and they returned that night at a quarter past ten o'clock. Mr. Nicholson was here that day; I asked him to remain as the magistrate and he was kind enough to do so. We had some fourteen or fifteen men, and knowing very well that if any collision took place at all it would be at the head of Irish-street, leading into Union-place, I had men drawn up, first at Patterson's, at the head of Scotch-street; but believing that we would not be near enough to prevent anything occurring I took them back and formed them at the very corner opposite to Union-place. This drumming party came up Church-street beating drums, and crossed down to the part of Irish-street at Union-place, and as they were going into Union-place a number of people were coming up Irish-street shouting and hissing, and two or three stones were thrown. Nothing further occurred—it was an occurrence of not five minutes or anything like it. Kelly, who was examined here, and Ogle happened to be by at that time. I asked Kelly who, I knew had a good deal of influence, to assist in preventing those people from making any row. He kindly did so; and I took the opportunity of thanking him and Ogle afterwards for it.

5140. They were useful on that occasion?—Very much so.

5141. And co-operated with you?—I invariably found Mr. Kelly anxious for the peace of the town, and many other Catholics that are in it.

Sergeant *Armstrong*.—So I take it for granted the whole of them are; why not?

5142. Mr. Commissioner COFFEY.—That is, you found them anxious to advise the people to submit to those displays rather than have violations of the peace and the danger of heads being broken?—Precisely, that was quite the fact.

Mr. *McLaughlin*.—It is better for them to do that.

Mr. Commissioner COFFEY.—They deserve great credit for it. Public attention has been called to this state of things, they having appealed in the ordinary way without resorting to counter-violence, and they will be protected.

Sergeant *Armstrong*.—To be sure, and I hope the result of it will be stringent measures.

5143. To the witness.—I don't know whether it is worth while going into the matter of the effigy or not, but it has been referred to as part of the transactions and we may as well glance at it. It is said that some effigy was burned in February, 1869?—So it is said.

5144. Were you there; did you see the effigy?—No, not at all. There was a large bonfire or something of that kind.

5145. Windmill-hill?—Yes, from Windmill-hill; and from the size of it we could see from the head of Scotch-street distinctly the parties march round about it, and there were fireworks and shots fired.

Mr. Commissioner COFFEY.—You did the same yourself the previous week. The only difference between you was that they fired shots and you did not.

Witness.—There were drums beating and all that.

5146. Sergeant *Armstrong*.—You did not see the figure of the effigy?—Oh, not at all.

5147. Was there much firing, from your actual observation of what was going on?—I think the fireworks may have been taken for part of the shots—the rockets.

5148. The explosions of them?—Yes, the explosion. I heard a couple of shots fired; I did, distinctly.

5149. From firearms?—I should think so.

5150. Was there anything like an extensive fusillade?—No; I think the rockets—the fireworks—were taken for that by the inhabitants. I am not surprised at it either.

5151. They sometimes make a considerable noise. Did anything occur,—did you or any of the force in charge go down?—Yes.

5152. Towards the party?—I and Head Constable Collins and some five or six men were watching to see, when they would be coming down, what direction they would take. I first thought they would have gone by the railway, and in case they did so, I sent Collins down to the corner of the short highway to watch. However, about half-past nine o'clock, I think, a motion was made amongst them, and word came to me to the barrack; I immediately sent to the park to inform Mr. Newton and Colonel Knox of it; I assembled my men, and waiting for Collins to come up with his party, who were a little down, might have retarded me a little. However, Colonel Knox and Mr. Newton, and Colonel Knox of the 9th, I think, passed down Scotch-street before me, and as we passed after them and were passing Shamble-lane, a tar barrel came out of Shamble-lane with the Catholic party. That retarded my progress a little, for I was afraid we would have got between two fires, one in the front of us and the other in the rear; and I was obliged to send some of the men to the rear to prevent this from being carried out. Then Mr. Newton and Colonel Knox followed after me. When I came up I just heard a couple of stones thrown towards me, close to us. The general stone-throwing was right opposite at Moon's corner; each party was firing away, nor did they know—

5153. That they were mutual friends, but all were throwing stones?—Yes.

5154. On both sides?—So it appeared.

5155. Were any arrests made?—It would have been impossible to have either identified or arrested any persons with the number of men I had—quite so.

5156. I believe it blew over in a short time?—It blew over. They turned down the short highway, and all was quiet in twenty minutes.

5157. I believe you were thankful for that?—I was very thankful for it.

5158. Did Colonel Knox and the other Colonel Knox and Mr. Newton stay in the streets for some time?—They did for some time, till all was quiet. When we returned back again the tar-barrel was out—the police were just putting it out.

5159. Of course you recollect, though you did not see it, the occurrence of the breaking of some glass in the chapel windows?—I do.

5160. That was in April, 1869?—Yes.

5161. We know that informations were taken of all that occurred in reference to that?—I do.

5162. Did you, as far as you were personally concerned, exert yourself to discover the perpetrator of that?—I used my best exertions. I went to Mr. Powell's house, where two servants came out when they heard the crash of the window, and saw two little boys on a heap of stones, and who went away; and they swore in court that they were not able to identify them; and we could not possibly find out who they were. We summoned three parties that were of that procession, and those three parties were not sufficiently brought into connexion with it—at least the law adviser considered that it was so; and his opinion was, that the summons should be taken out in another way. I waited on Dr.

Slane, and asked him to allow me to introduce his name as the party connected with the business. He decided that he would not; and I considered that I could not do any more.

5163. Introduce his name, how?

Mr. Commissioner COFFEY.—As a sort of trustee of the chapel property.

5164. Sergeant *Armstrong*.—Now, I believe you on all occasions found friendly co-operation, as far as they could, on the part of the Catholic clergy?—Most decidedly.

5165. To keep the peace of the town?—Most decidedly.

5166. And you have found the same on the part of the magistrates who happen to be Protestants?—Most decidedly.

5167. Now, we will come to the 12th of July, 1869—the occasion of the Orangemen going to Killyman. Were you here at that time?—Yes.

5168. I believe there were two resident magistrates here on that occasion?—There were.

5169. Who were they?—The Hon. Major Forbes and Mr. Goold were the two.

5170. State what occurred in reference to that, as far as you recollect?—That is, in 1869?

5171. You may look at any memorandum?—Yes, I remember that very well. The arrangements were made by the magistrates in concurrence with the officer in command here at that time. That morning the orange party passed along here from Castlecaulfield, or from that direction. I think an Orange lodge from between this and Aughnacloy came in that way. They were passing along at the Fowl-market when parties who had concealed themselves there threw stones at them; and had it not been for the interference of the Head Constable, who can tell more particularly what occurred—

5172. What is his name?—Stewart.

5173. About what force of police and military were in town on that occasion?—We had a very large force.

5174. Who was the commanding officer of the military?—Colonel Oaks, I think, of the 12th Lancers.

5175. He, of course, took the directions of the magistrates?—He coincided with them. He took very great power upon himself, I must say.

5176. Did the magistrates, I ask you, generally, on that and on every other occasion, co-operate with you in good faith and to the best of their judgment and ability, to repress those disturbances and to preserve the peace?—No doubt of it in the world.

5177. Were you at Killyman on the day of the funeral?—No.

5178. I understand that it was some member of the Orange body who had died, and to whom they desired to give a public funeral?—So it was reported to me.

5179. You were not out in the country?—No.

5180. We know that informations were returned, and that they said there was no case. Do you know anything of a drumming party in Perry-street last February?—I was not at home then; I was attending the fair of Tamrock on the 24th of February. Captain Ball complained. I was sorry I did not hear of it. I would have felt it my particular duty to inquire into any insult that should have been offered to Captain Ball most decidedly. I would have felt it to be my particular duty, but I never heard a word of it until I don't know how long after it occurred.

5181. Did the Captain himself make any representation to you?—Oh, never.

5182. Then you heard nothing about it?—I never heard a word of it.

5183. From your long experience here, and all you have observed, is it your opinion that these drumming parties should be prevented?—Most undoubtedly. It was always my particular wish to do everything I possibly could to put them down.

5184. You have had a very long observation of the conduct of the bench in taking informations?—I have.

5185. Has that been the general tone of feeling?—

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That was the general feeling, not only of the magistrates but of the respectable inhabitants of Dungannon, both Protestants and Catholics.

5186. Is that feeling universally entertained by all well-disposed people?—No doubt of it. They are considered the greatest nuisances that possibly can be in the country.

5187. And calculated to provoke?—Certainly—animosity.

5188. And perhaps intended to do so?—And I would say intended to do so.

5189. Do you approve, as a matter of experience and observation, of giving the magistrates a summary power to punish people drumming in this way, irrespective of any nice considerations as to whether there was immediate or prospective danger of a breach of the peace?—I am generally for immediate punishment. I think if the magistrates had that power, without having to go into particulars or matters—

5190. Into motives?—Into motives at all.

5191. Or tendencies?—Or tendencies, or anything; if they had that power it would have a most desirable effect on this country.

5192. Do you believe, from what you have witnessed of their conduct on the bench, that they would exercise that power if they had it?—Most undoubtedly they would.

5193. Have you ever observed—I ask you on your oath—anything that struck you as partial or unjust in the decision of the magistrates in party cases?—Oh, never; when attending here at petty sessions I have found the magistrates most anxious to inquire into every particular connected with any party case that was brought up; and where they thought they had not power they submitted the informations for the advice of the law adviser of the Crown.

5194. Has Captain Ball at any time complained to you or reported to you what struck him as partiality or misconduct on the part of his brother magistrates?—Oh, never.

5195. Or on the part of the police?—Oh, never. Never mentioned a syllable; never complained to me.

5196. He acted with you cordially and confidentially as far as you understood?—Most decidedly, up to his evidence at the Court of Inquiry on me. I had written to Captain Ball to be one of my witnesses; and up to his giving that evidence—I never was so much surprised—I swear it positively, I never was so much surprised in my life.

5197. You had written to him to be one of your witnesses?—To be one of my witnesses. If another had told it to me outside the door I would not have believed him, for he had acted with the greatest cordiality with me. I am sure if I was to speak my mind on the subject, I think, on consideration, that he would not do it again.

Cross-examined by Mr. *McLaughlin*.

5198. Is it your opinion that Catholics should be allowed to carry on the way that Protestants are allowed to carry on?—To give an answer to that, these things have been a general thing in this country before I came here, have been allowed to be carried on, and they have been allowed to be exercised with a freedom that should not in my opinion, and consequently have become very injurious to the feelings of the Catholics.

5199. But having regard to that, are you in a position to give a direct answer to this question. Do you believe that the Catholics should be allowed to do what the Protestants are allowed to do?—I have no reason to doubt it.

5200. Because I thought your own first answer was to the effect that the Protestants had a sort of prescriptive right to carry on. Those drumming parties had been created prior to your arrival here?—No doubt of it.

5201. Therefore the Protestants would have an argument out of prescription, and the Catholics would be minus that argument?—Because they did not exercise it—not in this town; but they have in other places in this country.

Mr. Commissioner COFFEY.—Indeed they did exercise it, and to the intolerable nuisance and danger to the public peace of the two or three countries that I am acquainted with, and the magistrates met and informations were sworn of the most startling character, supported by the appearance of those counter-parties, marching within perhaps a quarter of a mile of each other and defying each other to enter into this district and that, and lying in ambush.

Witness.—If Mr. *McLaughlin* will allow me to mention a matter—on the very second of this present month I was with a large force fifteen or sixteen miles from this where there were at least 2,000 Catholics who came in with four flags and seven or eight drums and marched through the country and nobody ever interfered with them, because it was in their own district.

5202. What do you think would be the consequence of a similar procession here in Dungannon?—I think it would be attended with the worst consequences.

5203. Great turbulence and probably loss of life?—I do.

Mr. Commissioner EXHAM.—Except they sent an army here to stop it.

Mr. Commissioner COFFEY.—I am happy to think that we are stopping it where I am acquainted with, and I can only say, with the machinery of the present law put in motion.

Mr. *McLaughlin*.—That is because you are in earnest.

Mr. Commissioner COFFEY.—Do not say that. I generally am in earnest.

Sergeant *Armstrong*.—It is simply because Mr. Commissioner Coffey is a lawyer, and speaks with authority.

5204. Mr. *McLaughlin* (to witness).—You have given your evidence very fairly and I will not keep you long. Is not it the tendency of the present state of things to go on and on until it eventuates in something like that?—I hope not.

5205. Is not that the natural tendency of it?—No; I hope not.

5206. Mr. Commissioner COFFEY.—If things are to prevail as hitherto, what do you suppose is likely to be the result?—The result will be that there will be bloodshed; and I must mention further than that that it is my opinion that many of those little interferences with the Protestant party has been done to get up a collision between the police and the orange party, in order that a case might be made to the Government?—Quite my opinion—and not intended to injure the police at all.

5207. What do you mean to convey by that—that they get up those collisions for the purpose of putting the police in motion so that they will get into deadly collision with the Orangemen?—Not deadly conflict.

5208. What I mean is, that they will use firearms?—That may be made use of for a purpose.

5209. For the purpose of putting down the thing?—Precisely, that is quite it.

5210. In fact making instruments of you, and whipping the orange party over your backs?—Precisely so; that is quite the result. I know that to be the case.

5211. Mr. *McLaughlin*.—Is it your opinion that what the Catholics should do would be tamely to submit to the whole affair so long as the others like to inflict it on them?—Certainly not.

Mr. Commissioner COFFEY.—I know I, for one, would not submit to it.

Mr. Commissioner EXHAM.—Mr. Smith did not say that.

Witness.—Certainly not.

Mr. *McLaughlin*.—I am interfered with every minute.

Mr. Commissioner COFFEY.—We find it necessary to interfere occasionally.

Mr. *McLaughlin*.—So I observe.

Mr. Commissioner COFFEY.—And I am afraid if you continue the same spirit of cross-examination you will have to observe it more still; because whenever anything occurs likely to create mistake or misapprehension, although it may interfere with your cross-

examination, it is the bounden duty of those who are listening to the evidence and to take an impartial view of it, to interfere to prevent the danger of misconception.

Mr. *McLaughlin*.—Do you think there is a danger of misconception?—I ask a witness his opinion and he answers the question in the negative.

Mr. Commissioner COFFEY.—I do not think it right to put an interrogatory to me in that way.

5212. Mr. *McLaughlin*.—You are right.

(To witness).—Is it your opinion that the Catholics should submit to this patiently?—Decidedly not.

That was the answer that he gave before and it was on that occasion that Mr. Commissioner Coffey made the observation.

Mr. Commissioner COFFEY.—Because, Mr. *McLaughlin*, I thought it right and convenient to observe—and though you choose to comment on what I am saying, I must say it again and again—, because I thought it right and convenient to observe that that is not the isolated opinion of Mr. Smith, but of every witness who has been produced here.

Witness.—You will allow me to say that by my answer in that case, I did not mean that they should resort to violence.

Mr. Commissioner COFFEY.—Certainly not; I should be the last to recommend that myself.

Mr. Commissioner EXHAM.—Certainly not; they have called on the Government to have an inquiry into it and to try and give them redress, and as far as I and my friend are concerned I hope the report we shall make will be the means of doing good.

Mr. *McLaughlin*.—I hope so; but I have nothing to do with that. I have only to get out of this gentleman his evidence, and he has given it fairly and with great astuteness and intelligence.

5213. (To witness).—Then there is nothing unnatural in the conduct of the Catholics as far as you have seen?—Oh, nothing particular.

5214. Is it your opinion that the occasion on which two rival parties were for a long night in two hostile camps firing at each other, and in the result the Catholics only returned for trial and the Protestants not returned for trial, nor their names taken—is it your opinion that that is anything but a most lamentable and melancholy failure of public justice?—That was not the case in the instance you refer to. The orange party at that time were, I presume, at their homes. If Castlecaulfield were their homes, they were at their homes quite time enough before the firing commenced at all.

5215. Who were firing from the opposite hill?—What opposite hill?

5216. From the Ballygawley-road?—There were shots fired—I mentioned that—when they crossed the railway; but they never stopped. They did not stop a moment. There is a man here, a police constable, whom you can examine, who was following them.

5217. Did you hear it sworn that they were here for hours?—I did not, and I do not think anyone could swear that.

5218. As I understand, this was the order of events on the 12th of July—

Mr. Commissioner EXHAM.—Some one certainly did say that, and the impression left upon my mind was for at least two or three hours.

Witness.—It was stated not by me.

Mr. Commissioner COFFEY.—No; Mr. Hayden said that for a considerable time they dug up the pavement and prepared to resist and got out into the streets, and that during the period when this preparation for resistance was going on the shots were being fired from the opposite hill.

Witness.—That was not the time the pavements were dug up, for I saw the pavement dug up in Shamble-lane.

Mr. *Hayden*.—I fully admit that our party remained longer than the other party; but I say, assert, and reiterate that the other party did remain firing shots for a considerable time on the road.

5219. Mr. Commissioner COFFEY.—What do you mean by “a considerable time”?—Well, I did not take the time, but I would say fully an hour, and I

am prepared to prove it by all the Catholics that heard it.

5220. Mr. *McLaughlin* (to witness).—You stated, Mr. Smith, in your direct examination that the Catholics on the 7th of August were doing nothing more in reality than to protect themselves?—That is my opinion.

5221. They were determined in consequence of the wrecking of the night of the 12th of July to preserve their lives and property?—Certainly.

5222. The Catholics then were summoned and sent forward for trial for appearing on the street armed, and for riot—is not that so?—It is.

5223. Now, their houses had been wrecked on the 12th of July?—Yes.

5224. They were, according to your statement, and fairly, there for protection and nothing else, to prevent a repetition of it on the 7th of August?—Yes.

5225. Turning your attention to that, is not it a lamentable thing that none of the assailants, for the transaction of the 7th of August, were made amenable?—How can I say it is a lamentable thing when there is an explanation necessary that may make a difference?

Mr. Commissioner COFFEY.—Say yes or no, and then explain anything you please.

Witness.—But supposing I say “yes”?

Mr. Commissioner COFFEY.—Then say “but I am also of opinion—”

Witness.—Well, then I say yes; but the Catholics that armed themselves, and armed in their houses, there was no notice taken of them; but those that came out in the street and fired shots there, and assembled to the terror of those people who might be passing by, they were ordered to be taken down, and their names were taken down.

5226. Mr. *McLaughlin*.—Now, after the explanation that qualifies your answer, after that explanation, don't you still think it a lamentable thing?—Didn't I say it was.

Mr. Commissioner COFFEY.—Surely there is not a human being that would not say it was a most unfortunate fatality that—

Mr. *McLaughlin*.—I do not say it was a fatality at all. That is my view.

Mr. Commissioner COFFEY.—I put it that it was a most unfortunate fatality that upon that occasion there were not some of the other side made amenable, because at first blush, reading it, in the eyes of the public and amongst an exasperated people, it unquestionably gave ground for the supposition that there was prejudice and unfairness.

Mr. Commissioner EXHAM.—And what I say is this:—If it was done with the connivance of the police for the purpose of not taking the names of the Protestant or orange party, they acted grossly negligently of their duty. If they had not force enough to be able to do it, then I say it was a very unfortunate fatality that they had not force enough, or persons who knew the party, to be able to do it.

Sergeant *Armstrong*.—They did not know them.

Witness.—It was not an element in the duty at all, what the people were. I will produce to you—

Mr. *McLaughlin*.—No!

Sergeant *Armstrong*.—Do state anything that occurs to you, because it will assist me.

Mr. *McLaughlin*.—Manage it in some other way, if you please.

5227. (To witness). I think you had given me an affirmative answer to that last question, that it was a lamentable thing?—Yes.

5228. And I think I should be guilty of a gross neglect of my duty, if having the gentleman in command that night, I neglected to put this question, because I must see *quo animo* the thing was done. Now, a number of persons of the orange party had been arrested and sent forward for trial for the affair of the 12th of July, 1865?—Yes.

5229. Is that so?—Yes.

5230. And a number of Catholics also?—Yes; eight.

5231. And how many of the others?—I forget indeed, but there was a number larger than that.

5232. A larger number?—Oh, yes; twelve or thirteen.

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Mr. Commissioner EXHAM.—Eighteen is the number stated on the Crown books.

Mr. *McLaughlin*.—No ; that is the 7th of August.

Mr. Commissioner EXHAM.—No ; there are eighteen on the Crown books for the 12th of July, of one party, and eighteen of the other party on the 7th of August.

5233. Mr. *McLaughlin*.—Then is your evidence that you had some doubt as to whether you should take the names, and that you spoke to Mr. Brooke, and that Mr. Brooke said that inasmuch as the orange party had been summoned for a similar offence these should be summoned to—is that a correct representation?—Quite correct.

5234. And that was the reason that he gave for it?—That was the remark he made.

Mr. *McLaughlin*.—And I think it was the true reason.

Mr. Commissioner COFFEY.—I quite concur with you that it is a very equivocal transaction, but you will bear in mind in your further cross-examination of this man that Mr. Brooke is dead.

Mr. *McLaughlin*.—May I take the liberty of saying, even as a matter of personal honour, have I indicated in any way that I was insensible of the fact that that gentleman has gone to his account? I have never mentioned his name before since the inquiry began.

Mr. Commissioner COFFEY.—You mentioned it now.

Mr. *McLaughlin*.—I did. Could I help it?

Mr. Commissioner COFFEY.—I will not carry on this controversy in that tone or style.

Mr. *McLaughlin*.—Do you think I am properly cross-examining the witness?

Mr. Commissioner COFFEY.—You have perfect liberty and entire freedom to cross-examine the witness ; but it is my duty to point out to you that you are not at liberty to go into the conduct of Mr. Brooke beyond the bare fact of what he did upon that evening, because the man is not here to answer for it, and it would be in the highest degree unjust to have a slur cast upon his character which, being dead, he cannot now remove.

Mr. *McLaughlin*.—All I have done is to read carefully out—and I respectfully ask your attention to this—to read carefully out from my note the very words of this gentleman's direct examination. They and they only comprised the materials of my question, and in the name of fair play, what is there wrong in that?

Mr. Commissioner COFFEY.—There is nothing wrong in that, and there is nothing wrong in my telling you when you are proceeding with your cross-examination, to what extent you have gone beyond the point.

Mr. *McLaughlin*.—With great respect I was not ; and when I state that I believe that to be true. Perhaps I should not have said that ; but so far as regards going beyond the question, it is my recollection I did not do it.

5235. (To witness).—Mr. Nicholson was present at Union-place?—He was.

5236. Before I pass away from this—because I am taking it chronologically—is this a correct note of your evidence, that “the Catholics had no fault in the matter, they only armed themselves against the others ; they appealed to me to protect them?—Numbers of them. Those Catholics that kept inside in their houses, there was no fault in the world in them.

5237. Mr. Commissioner COFFEY. — But keeping inside their houses, how were they amenable to the law in any shape?—That is what I say. Those who were inside were not at all at fault. They armed themselves to protect themselves— even upstairs I saw them ; but those who came in the street and fired shots, to the terror of the people passing by, them were the parties whose names were identified.

5238. Mr. *McLaughlin*.—Suppose, for a moment, that there was a general wrecking by an overwhelming force on the 12th of July, 1865, by a force compared with which the police were nowhere, and suppose the moment those people would enter a street like Irish-street determined on wrecking, the wrecking of it followed as a matter of course?—That was the expectation and that was the reason I was in Irish-street with my party, and not following those that went on the road.

5239. Suppose on the 7th of August the same party or an analogous party came back, and that it was the opinion of reasonable men that they would do the same thing, I want to know would you think the Catholics would be in their right mind in not going into the street and trying to prevent the others coming into the street?—They did not come into it.

5240. But would you think it a wise thing for the Catholics to wait in their houses until they were opposite their doors?—I would not if such occurred.

5241. But such did occur on the prior occasion?—Yes, it did, in the daylight, but this was at night.

5242. Mr. Commissioner COFFEY. — And more dangerous, therefore?—Yes.

5243. Mr. *McLaughlin*.—And from that day to this none of the wrecking party have ever been punished in respect of the transaction of the 7th of August or the other?—Neither.

5244. In that you include the Catholics?—Certainly, both parties.

5245. Whose conduct you have purged from all offence in the way you have stated?—Both parties.

Sergeant *Armstrong*.—They all pleaded guilty.

Mr. *McLaughlin*.—They could not, because, *quod* the 7th of August outrage, none of the Protestant party pleaded guilty.

Sergeant *Armstrong*.—All parties pleaded guilty at the spring assizes of 1866, and were turned home.

Mr. Commissioner COFFEY.—Although I do not think that Mr. *McLaughlin* should push his examination too far into the conduct of a man who is dead, and not able to answer for himself, the transaction presents features that it is impossible to dismiss from one's mind.

Sergeant *Armstrong*.—We all know (whoever were prosecuting) they were sent to the assizes, pleaded guilty, and were sent home ; and what, in the name of God, have the magistrates to do with that?

Mr. Commissioner COFFEY.—I am not saying that they had.

Mr. *McLaughlin*.—I wonder what would happen me if I made a declaration like that. But I trust that in the reference to Mr. Brooke being dead the learned Commissioner did not intend to allude to me directly or indirectly, because I thought from the last observation of Mr. Commissioner Coffey, that—

Mr. Commissioner COFFEY.—Indeed I did not.

Mr. *McLaughlin*.—A covert allusion to a dead man is a thing, I trust, I am not capable of.

5246. (To witness). Did anybody tell you, Mr. Smith, not to arrest anybody on the night that Mr. Nicholson was there?—No, the thing was the act of a few moments, and it was considered better not to even summon the parties.

5247. I believe in the interval between the 7th and 12th of August, a report prevailed that the Catholics were rising in their might, and were coming in in large numbers for the 12th of August?—That had been reported more than once, but particularly on that occasion it was.

5248. But, having regard to the precedent events of the 12th of July, 1865, and 7th of August of the same year, the previous reports, if there were any preceding reports with reference to the anticipated entry of the Catholics, had acquired a new and dreadful significance?—It had.

5249. In view of that altered state of facts, it was the business of the authorities to send for a large force of cavalry, infantry, and police?—Quite so.

5250. And they had them there, and nothing happened?—Yes.

5251. That was proper conduct?—Quite so.

5252. The 12th of August is in many parts of the north regarded as an orange anniversary?—Yes.

5253. And I suppose the Catholics would think that it was another occasion for an incursion of the Orangemen?—I believe they were of that opinion.

5254. And they did come in to some extent?—I do not know that.

5255. With reference to the effigy business, you did not see it?—No.

5256. But you heard shots fired?—I did.

5257. And although you say that some of the reports that were mistaken for gunshots, were in reality the explosions of fireworks?—Fireworks.

5258. Yet you do not mean to say that there were not some gunshots properly so called?—Oh, there were; I think there were. That is my impression—a strong impression.

5259. No one was arrested on that occasion?—No.

5260. Do you remember whether or not—I need hardly say that that affair about the effigy was utterly unforeseen, and you could not have known of it; it is only fair to you to say?—No; I heard it in the evening; I set out for three or four additional men.

5261. Then you had heard something about it?—Yes, I did. I did not hear that an effigy was to be burned, but I heard that there was to be a counter-meeting and bonfire; and I did not know where it was to be either, for I was not at home on the night of the burning of the tar barrels in Anne-street and Irish-street, and through the town; I was at the fair of Pomeroy. It was on the 9th.

5262. The 9th of February?—Yes.

5263. This affair of the 23rd of April, 1869, was that the time when the chapel was injured?—Yes.

5264. Now, do you know whether or not the party who, on their return, are alleged to have done the injury to the chapel, went up the town?—Oh, they went up by John Huston's house, and went up Northland-row, and past the chapel; and there was proof in evidence here that they were at the lime-kilns, and beyond it, at the very same time the stones were thrown, and the windows broken.

5265. But did not a small party, a contingent, come in and join another party here, and then all go out?—Yes, they did, through the bush.

5266. Does not it occur to you as noticeable that no person was arrested for that?—There were three names taken.

5267. And only three?—Yes.

5268. Would not it occur to you that that is a small proportion of names under the circumstances?—I thought so myself.

5269. Would not it occur to you that the circumstance of your having men posted at lamp-posts?—That is on another occasion.

5270. I am now grouping the facts of the case. On the occasion that you have heard the witness tell us about the men standing at the lamp-posts, and all that?—I was present by at that myself.

5271. Would you think it immaterial that a stranger should regard it as somewhat queer, that nobody was identified?—Well, I would not at all think that they ought to be surprised, unless they were by and see what occurred.

5272. That is to say, those that did not know all the circumstances might be surprised?—Decidedly.

5273. And I think you gave three reasons for it—you said the crowd was great, the night dark, and the dust flying?—They were, in fact, in a cloud, or a fog, of dust.

5274. What time of the night was it?—It was between nine and ten o'clock.

5275. On the 7th of August?—Yes; just dusk—just dark—dusk.

5276. Did you see the party going out to the effigy burning that night—going out of the street beating drums?—I did not.

5277. I think you said to Sergeant Armstrong that the promise given to you by the people out at that place you mentioned?—Castlecaulfield.

5278. Yes—with reference to their not coming into Dungannon—was broken?—Yes; the promise was given to Mr. Coulson and the Rev. Mr. Hamilton by a man—it is not right to mention his name, perhaps he may be within hearing; he is a prominent person in that part of the country, and a leader in the orange parties; and in consequence of private information received, that they were to go, to Anna-makeown, and from more than one party, and informations made subsequently before Mr. Coulson that that was the fact. That was the reason.

5279. At the police inquiry, when you cross-examined Mr. Ball—I refer to this only so far as it concerns myself?—I do not think it is fair to ask me anything about Mr. Ball regarding the police inquiry. Unless the Commissioners direct me to speak, I will object to it.

Sergeant *Armstrong*.—It is a pending investigation, and this is the gentleman against whom the charge was made.

Mr. Commissioner *COFFEY*.—Let us see what the question is.

Sergeant *Armstrong*.—It would be an entire breach of fairness.

5280. Mr. *McLaughlin* (to witness).—You need not answer whether you received directions from the magistrates, but do you remember asking Mr. Newton what directions he had given you that night?—I may have, but I do not recollect.

5281. I entirely agree with Sergeant Armstrong, and I have no hesitation in saying it, to cross-examine this gentleman about the conduct of the police on that inquiry would be grossly and palpably unfair?—Yes. I do not care about any question you ask me about the police, except about Captain Ball himself.

5282. Did you get any directions from Mr. Newton that night as to what you should do?—

Sergeant *Armstrong*.—What night was this?

Mr. *McLaughlin*.—The night of the effigy burning.

Sergeant *Armstrong*.—He was not here at all.

Witness.—I was not up with Mr. Newton at all at the time the stones were thrown. I did not come up to Mr. Newton till the stones were all thrown.

5283. Mr. *McLaughlin*.—Now, I never heard that there was any but one effigy burning, and it is about the burning of the effigy that I am speaking, and perhaps that will fix the date, having regard to the bill of particulars. Do you know the passage referred to by Mr. Newton, where he speaks about himself being hit in the leg?—Yes; I recollect it all.

5284. Now, did you get any specific instructions from him that night about not arresting anyone?—I do not recollect it.

5285. Or from Colonel Knox, who was present also?—I do not recollect that I did.

5286. Now, all these things that you have deposed to in your direct examination, and?—I may have, but I certainly do not recollect it at this moment.

5287. Having regard to what you have sworn—I mean, confining it to your own knowledge, and your own evidence—having regard to what you have sworn, confining it to your own knowledge, and your own evidence, do you think it extraordinary that a feeling of want of confidence should prevail among the Roman Catholics with reference to the magistrates in party cases?—I do not think they ever had the slightest occasion. I do not think they ever had. In any case ever I brought before the magistrates they were most anxious to do their duty, if they only got the authority from the law officers of the Crown.

5288. And, as I understand you, they have not the slightest occasion for the feeling that prevails?—Every occasion about the drumming parties not being put down, but certainly not attributable to the magistrates.

5289. You think they have no occasion for feeling any sentiment of distrust in consequence of matters to which you have deposed?—I certainly think not.

5290. But you believe that there exists a wide-spread feeling of want of confidence among the Catholic population with reference to these party affairs?—I know that exists.

5291. You don't believe that it is natural?—I do not believe that it is correct. From my acting with the magistrates in concert relative to crime, relative to these drumming parties, relative to every other case that I bring before them, I invariably find them most anxious to grapple with anything that would bring the parties to justice.

5292. I suppose that is the only answer you will give me?—I will give you an answer to anything.

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5293. Do you think anything could be more natural than they should feel that want of confidence, rightly or wrongly?—I suppose, from the way you ask the question, rightly or wrongly—

5294. Sergeant *Armstrong*.—You believe this want of confidence exists?—I do.

5295. Did you ever observe anything to warrant it?—Never.

5296. When Mr. Brooke said that the people, who were conducting themselves in a certain way, ought to be summoned, and their names taken, what were those people doing at that time?—Shots firing at that time, and there were only a few of us in it, and as soon as we would be here a shot was fired there, and as soon as we would wheel about a shot was fired by them here.

5297. Were they a defensive party or an aggressive party?—There was but one party in it.

5298. Were they attacking or defending?—They were defending themselves—the people in the houses were; but those in the street we considered as an offensive party.

5299. But as regards the people of whom the names were taken, were they offensive or defensive?—Offensive.

5300. They were offensive in one way and defensive in another, that is to say, they were on the watch and in preparation, and they exhibited that in a noisy way. Whether they were offensive or defensive, desiring to display resistance, do you think it was a proper thing, having regard to their conduct, to have them summoned?—I think it was a proper thing, for when Mr. Coulson came next morning the names were laid before him—when he was written for—and he considered it was a desirable thing to have those parties summoned and sent forward, inasmuch as they were on the street and that they were an obstruction to the thoroughfare.

5301. Mr. Commissioner COFFEY.—Upon my word I cannot understand that for the life of me. Because as I understand your evidence you say this, that considering the frightful scenes that occurred when there was an incursion before on the 12th of July, your own feeling was when the drumming party was approaching, that you expected a repetition of the same conduct?—That was what was reported to me.

5302. You had but ten or eleven police under your control?—Eight.

5303. A small number—and you say that you believe *bona fide* the Roman Catholic population were in apprehension and terror that their houses were going to be wrecked and their property destroyed?—Such was reported to me, and in consequence of it I got into Irish-street.

5304. And is that your own feeling?—That was my own feeling at the time.

5305. That it was probable, or likely, or possible?—No doubt of it.

5306. That being so part of the men got into their houses, barricaded them, and prepared themselves with firearms, and their names were not taken down?—Just so.

5307. Another portion of them, according to the testimony of Hayden and yourself, took up the pavement?—They did.

5308. And prepared to make up barricades and resist?—They did.

5309. And put themselves in an attitude of resistance?—They did.

5310. Shots are fired on the road immediately adjoining, from a supposed hostile party?—Ah! but what distance?

5311. I do not know. They were within hearing?—Oh, at that time they were not.

5312. Let me understand you?—When some of these people got into their houses for the purpose of preparing to resist from their windows, and others commenced taking up the pavement, was there any sound of firearms heard from the road?—None.

5313. And was it your opinion at that time that all apprehension of danger had ceased?—It was not.

5314. Then those people who assisted nobody, who

attacked nobody, but showed that they were in a condition to defend themselves, they were summoned—and I won't say improperly summoned, because that was a subject for inquiry and serious investigation. I cannot conceive anything more serious or that called more for the action of the magistrates than to have it reported to them that their town was alarmed, that they were in a state of siege, or apprehended siege, and preparation for defence with firearms. That being so, all these people are taken and summoned, and the aggressors, the parties that you, the chief officer, say gave reason for an apprehension of that sort are not dealt with at all?—It was so stated to me.

5315. Now, I want to ask you, following up that observation of mine—and nobody is responsible for it but myself—Mr. Coulson is sent for, you say?—Yes.

5316. And he, alone, the next morning, conducted whatever investigation was conducted, granted summonses, and held people to bail?—He did.

5317. Where was Mr. Brooke at that time?—Mr. Brooke came in but his business took him away, and he left the whole thing to Mr. Coulson.

5318. He took no part in it?—None; Mr. Coulson took the whole responsibility on himself. And another thing, an element that I did not mention to you was that these people, generally, were not the inhabitants of Irish-street.

5319. They were inhabitants of other portions of the town?—Of every portion.

5320. And don't you think it is but natural that when a whole denomination of a population is attacked the feeling of resistance should pervade all parties of that denomination?—Quite natural. The difficulty about the whole matter is this, of party. The drumming party came in about an hour before this and they went to their lodge at Miltown. They fired shots going along the new road. They came in a straggling way and crossed the fields there, and were met by other parties from Aughnacloy road, as I understood, and they fired shots in a straggling kind of way. They then passed into Miltown. I got my men and brought them down to Moon's hotel, as I have mentioned, with the full intention of having the names of the parties taken down.

5321. I am not in the slightest degree blaming you, for I think you acted with great firmness, prudence, and propriety throughout the whole of this transaction, and it is only fair I should give you that opinion. I am commenting on the transaction itself.

5322. Mr. *McLaughlin*.—Miltown is just beside the town?—It is within a stone's throw.

5323. Within gunshot?—It is.

5324. With reference to the demeanor of the Catholics who were on the street, is not it the fact that several respectable Protestant gentlemen were allowed to pass through these people, and with the utmost possible absence of any enmity?—No doubt of it—passed with ingress and egress.

5325. And it was purely and simply only a defensive affair and nothing more?—No doubt of it.

Mr. Commissioner COFFEY.—A defensive affair conducted on one side with great firmness and quietness, and by others with noisy demonstrations. All people have not the same nature. Some will be patient and determined; others will be noisy; but still if they were all engaged in the apprehension that they would be attacked, it is, I say, a great fatality that some of the other parties were not made amenable—

Witness.—I swear it was impossible, and you will have men here, men of different persuasions, to prove to you that my words are true.

I don't doubt it. I have already given you credit for great propriety, firmness, and discretion in the discharge of your duty.

5326. Mr. Commissioner EXHAM.—Before you went up Irish-street did you send Clarke after this orange party?—Yes.

5327. How long after did he return to you?—He returned immediately in consequence of the shots that were fired, and the terror that was in Irish street—that is, the terror that there were shots fired, and that the orange party were coming down Anne-street; but

when we came up the hill, the street was in a state of excitement.

5328. Your vidette came back and reported to you that they were going in the other direction?—Yes, that they were coming across the hill in the back way, and going to come down on the people in Irish-street; and then out of Irish-street we could not get, the people were in such an excited state, till it was after twelve o'clock; and then it was only shots fired out of a yard in Scotch-street that drew me out of it. That case of the firing of the shots down Scotch-street was about a man's house named Christal, and we went in and got a gun in one man's hand loaded, and another gun standing beside the wall that had recently been discharged. We arrested the man, and got some cartridges upon him—five rounds of blank cartridges, one ball, and forty caps; and next morning he was brought up and discharged. The attorneys were there, and in consequence of the man discharging the shot in the gateway, and the summons being for the 7th, and it being after twelve o'clock, the magistrates considered that the summons was wrong in point of date; and in the next place, the gun was not discharged on the street.

Mr. Commissioner COFFEY.—It was very unfortunate that that matter was left to Mr. Coulson instead of to somebody on the spot that could have given him information.

Mr. M'Laughlin.—I think it is right to all parties to mention this, that the fatality that both the gentlemen whose names have been mentioned here, the one a resident magistrate and the other a local magistrate, are dead, is a fatality of the existence of which I was not aware until it disclosed itself in the evidence; and I think nearly everybody in the court was in the same position.

Sergeant Armstrong.—During the lives of those

men not a word was said by any Catholic, and it is more than five years ago.

Witness.—Five or six.

Mr. M'Laughlin.—The Sergeant is, I am instructed, entirely in error.

Sergeant Armstrong.—Prove I am in error.

Mr. Commissioner COFFEY.—There is more to be said. According to the evidence of most of the witnesses they have concurred in saying they would have more confidence in the adjudication of the resident magistracy in party cases, than if it were confined to the local magistrates. In this case it may be that the magistrates conceived that after a popular commotion like this it was a great deal better for them not to interfere at all, but leave all the responsibility to the resident magistrate, Mr. Coulson.

Sergeant Armstrong.—Besides that, he was a singularly experienced man.

Mr. Commissioner COFFEY.—No doubt of it.

Mr. Commissioner EXHAM.—He was a man of very great experience.

Sergeant Armstrong.—And Mr. Lyle, when he returned from the assizes, reported to Mr. Coulson, and volunteered his assistance, and he said—"I will do it myself."

Mr. Commissioner COFFEY.—The more you probe the case the more it is a subject of regret that these two gentlemen are dead, and the transaction is so remote.

Witness.—I may observe that on all those occasions after 1865, since 1865, had not it been a breach of promise of honour, if that man came in here with a small drumming party—I believe I can say that after that occurrence, on all occasions when troops were removed here, the local magistrates gave their assistance by word, but left the entire management of the town to the official resident magistrates sent here.

Sub-Constable Jeremiah Clarke sworn; examined by Sergeant Armstrong.

5329. Are you stationed in Dungannon?—No, sir.

5330. Where?—Sion Mills.

5331. When were you stationed in Dungannon?—I was stationed in Dungannon in 1865 and 1864.

5332. In 1864 and 1865?—Yes.

5333. Were you here on the 12th July, 1865?—Yes.

5334. Were you one of the party left in the town to see after the town while the others went to Castlecaulfield?—Yes.

5335. There were about twelve, I believe, left altogether?—About that, I think.

5336. Now just tell me whether you saw the small party that came in in the morning—a rather smallish party which came in with the drum in the morning?—On that morning Sergeant Collins, now head-constable, and Head Constable Fitzpatrick heard where they were coming into town, and they went down as far as the end of that street, and when I went down the drums was broke—

Mr. Commissioner COFFEY.—Confine yourself to what you saw.

Witness.—When I went down I seen Mr. Brooke there and Father Quinn, and there was two drums that went into a yard to the left hand side as you go down, and Mr. Brooke sent me home—or sent me out to Castlecaulfield with the Castlecaulfield fellows that came in with that drum—

5337. Sergeant Armstrong.—Are you the man that was sent out for the police to come back?—I was sent back, but this was in the morning at the time the drum was broke, that Mr. Brooke sent me out with ten policemen—I was in charge of the town—to send the drumming party home.

5338. Is that all that you know about the morning?—At that time.

5339. Were you here that evening?—Yes.

5340. Tell the bench what you saw in the evening?—There came a large party of men into the town—

Orangemen. They had scythes with them, pitchforks, and they had arms—firearms. They had sticks. And we got before them here in George's street.

5341. Who were the magistrates that were here?—Mr. Brooke was here.

5342. Was Mr. Coulson?—Mr. Coulson was here—he was, and—

5343. Was Colonel Knox here?—Yes.

5344. Go on?—And they were in between the police and the drumming party, and they were wanting them to go back.

5345. Whom?—The drumming party.

5346. The magistrates were?—Yes, sir. They would not hear them at all, good or bad.

5347. They would not listen to them?—Not it.

5348. Well?—Mr. Coulson went into the right of the division where we were fronting—where we had the charge of at the time, and as Mr. Coulson was coming out a man to his right pulled the sword to one side, to his right, and the man to the left of him. That made place for him to go out; and as Mr. Coulson came out the man that carried the drum came out after him, and the whole of them then came out, and our men was put into confusion then.

5349. Was there a large crowd of the Orangemen?—There was.

5350. Was there a hundred or two hundred?—Oh, there was 2,000.

5351. And they broke out, followed the man with the drum. What did they do then?—They broke up the street then, and Mr. Smith was in charge of the men at the time, and he told us to form in a line in the street there, and the half or third of our men was not up in time to form a line, and the men of the drumming party was up before us, and we got into Irish-street, and some of us got before them into Irish-street, and according as they were running past Mr. Hayden's house from Shamble-lane, they took up stones and fired at the windows of Mr. Hayden's house.

5352. And they broke other houses and wrecked

Sub-Constable
Jeremiah
Clarke.

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Jeremiah
Clarke.

them?—Yes; and we were at the time formed in line, not to allow them through Shamble-lane—the remainder of the drumming party that was coming up.

5353. And did you stay late in the streets on duty—late that night?—I was, to about one o'clock that morning. But actually I do not remember what hour.

5354. But you were to a late hour?—Yes.

5355. And the police?—Yes.

5356. And the magistrates with them?—Yes.

5357. Were you here on the 7th of August?—Yes.

5358. Did you know that anything was going to happen on the 7th of August, or did it come unexpectedly on you?—I heard in the evening that the Orangemen was coming in for the broken drum from Castlecaulfield.

5359. Was there any patrol put on?—There was. Mr. Smith took down a party, and Mr. Hughes was living there at the hotel at the time, and we went down the street as quick as ever we could, where the most of the party, I should say the whole of them, was passed at the time that we came to the lamp-post, and Mr. Smith told us on leaving Hughes's to do our endeavour to take all the names we possibly could. We went down, and the night was dark, and the police could not identify one person of them. They came over this street here, and, said Mr. Smith to us, it would be better for us to go back and through Shamble-lane, for it is very likely they might be attempting to go up that street and into Shamble-lane, and we will keep them out of Shamble-lane; and we came up then, and as we came up Shamble-lane we came across, and there were stones to the right of Shamble-lane lifted up—

5360. That is, raised out of the street?—Yes, sir. We came down then, and we heard shots fired in this direction, about here, and we came down and followed the party up as far as this bridge out here, and there is two roads, one going to Castlecaulfield and the other to Ballygawley, and the party separated, firing shots along the road that way, and when we got on the bridge we heard more shots fired in this direction, and we said it would be better for us to go on and see what is going on up in the town. We came back again, and there was firing of shots in the town, and we remained on then with Mr. Brooke, and Mr. Brooke gave us orders to remain too, and not to leave him, and we remained till one o'clock that morning.

5361. Was it the hearing of the shots firing in the town that induced you to turn back and leave the fellows that were going home to Castlecaulfield and Ballygawley?—Yes.

5362. Mr. Commissioner COFFEY. — About how many were the whole number?—

5363. Sergeant *Armstrong*. — That were going to Castlecaulfield and Ballygawley?—Well, I should say there was three or four hundred of them.

5364. Were they mostly country fellows?—Yes; I took them to be country fellows.

5365. They were not some of the townspeople?—There might be some of the townspeople among it unknown to me.

5366. In the main body they appeared country people?—Yes; they never halted.

5367. Were you able to identify them?—On my oath I was not.

5368. And did you do your best?—I done my best to identify them, and did not think I could.

Cross-examined by Mr. *M'Laughlin*.

5369. Did they come in that day straggling and firing shots, in small parties?—In the morning, sir?

5370. In the evening?—What day are you going to now?

5371. Mr. Commissioner COFFEY. — The 7th of August, the same day?—I did not hear them.

Sergeant *Armstrong*.—Morning?

Mr. *M'Laughlin*.—In the evening, I said.

Witness.—Yes. I did not hear them.

5372. Mr. *M'Laughlin*. — How long were you in Dungannon at that time?—I suppose I was a year and a half in it. I am not right sure.

5373. When did you come to Dungannon last?—I came here on last Thursday.

5374. And you have been present in court, I suppose, all the time?—Yes.

5375. You knew about the drumming parties when you were here?—Yes.

5376. Did you hear Constable M'Ilwaine's evidence?—I did.

5377. Now do you think that these drumming parties are calculated to endanger the public peace?—I certainly do.

5378. And ought to be put down?—No question of it.

5379. Now when you came back that night to the Catholics where they were assembled on the street and all that, were they protecting themselves?—Well, when I came up I asked why they were there firing shots, and they said they were protecting themselves, and I asked them, "What is the use of firing shots, for the parties are away who were here, and where is the good protecting yourselves when we are here, and the parties out of town?"

5380. You had protected them so effectually on the 12th of July?—I could not protect myself on the 12th of July.

5381. That is what the dwarf said to the giant, "Don't be afraid, for I am here." Would you think that any man in his right mind would have any confidence in the protection of the police, having regard to the facts of the 12th July, when the orange party were wrecking the place, and you were looking on and could not help it?—Well, we were doing all we could on the 12th of July.

5382. And it amounted to nothing; and then you think they should be satisfied with your doing nothing on the 7th of August. Don't you think it was the most natural thing in the world for the Catholics to try and protect themselves, having regard to what had happened a few days before?—I say it was; but then the parties were out of the town, and we were there.

5383. Mr. Commissioner EXHAM.—You asked them what they were firing for. Now, at the time they were firing was there any person attacking them?—There was none.

5384. And you asked them why they were firing, and they said they were protecting themselves?—Yes, sir.

5385. And you got orders to take some of their names?—Yes, sir.

5386. And you took some?—Yes.

Mr. Commissioner COFFEY.—Mr. Hayden's history of this transaction, when we come to contrast it with the other evidence, is excessively open and candid. He says, they fired shots out of bravado and defiance.

Mr. *M'Laughlin*.—And he tried to stop them.

Mr. *Hayden*.—I advised one party that remained too long in the street when the others were really away, I advised them to go.

Sub-Inspector *Smith*.—Mr. Hayden done everything that he could.

Mr. *M'Laughlin*.—And I believe that they threatened to take his name if he did not go off the street.

Mr. *Hayden*.—I was told by a policeman that my name would be taken, although I was trying to make peace.

Head-Constable
Thomas
Collins.

Head Constable *Thomas Collins* sworn; examined by Sergeant *Armstrong*.

5387. Are you in the force still?—Yes.

5388. You are head constable?—Yes.

5389. What were you in 1865—what was your rank?—I was constable.

5390. Were you here on the 12th of July,

1865?—I was stationed in this town, and in the town.

5391. Were you one of the party in charge of the town, or that went to Castlecaulfield?—Yes; I stayed in charge of the town.

5392. After the main party had gone out with Mr. Coulson to Castlecaulfield, I believe some Orangemen made their appearance in the town?—They did.

5393. Was that unexpectedly?—It was.

5394. Just state what occurred in reference to that party, begin at the beginning of it that morning, and tell me what you saw yourself and were eye-witness to. First of all, it was unexpected?—It was unexpected. That being the case, a force was sent to Castlecaulfield, and another portion of the force in town were sent to Coalisland, and Head Constable Fitzpatrick, with I and some twelve or thirteen others, were left in Dungannon; and about two o'clock in the day word came to the barrack where we were waiting, that three drums was approaching the town from the direction of Ballygawley or Castlecaulfield—the same road—and Fitzpatrick and I went down Scotch-street to Moon's corner, then Mr. Hughes's hotel there, and we saw a party coming across the road below the courthouse, and crossed George's-street, and met them opposite the courthouse here. There were about twenty-five or thirty of them; and the head constable and I both remonstrated with them to cease the beating of the drums till they should pass through the town.

5395. Mr. *McLaughlin*.—This was in the morning?—About two o'clock. That was as near as I could at any time say the time was. They declined to do so and forced on without paying any attention to us at all. There were some few of the Roman Catholic party at the foot of Sloane-street that expressed their dissent from our course, that we were interfering to prevent any attack on them there. They got to the corner of the foot of Scotch-street, and they there appeared to go up Scotch-street; and the head constable and I again interfered with a few and sent them down Carr's-row, and not up Scotch-street. Still they did go up Scotch-street, and they were met by a party of the Roman Catholics coming down from Shamble-lane side, and stones were thrown there, and an engagement appeared imminent; and the head constable told me to go for Mr. Brooke, who was in the estate office at the time, and bring him down with all the rest of the party in the town. Upon that, I proceeded as quick as I could to the estate office, and reported to Mr. Brooke, and ran to the barrack and brought down all the men that I could see, and when I came down the drumming party had been forced into Prior's yard, and I went into the yard and saw there a few of them, and several gentlemen there looking at the drums; the drums were broken at the time, and there was an engagement got into how they were to be got out of the town.

5396. Mr. Commissioner COFFEY.—A parley?—Yes. The Rev. Mr. Quinn and Mr. Brooke, and several other gentlemen of the town were consulting what was best to be done; and a party of them were sent out under escort, leaving the drums and the fife, or whatever they had, in Prior's yard. The portion of the party that went into the yard, or came out with the drums were escorted out. Constable Clarke, the last witness here, was with the party that went out on the Castlecaulfield road. Another portion went out a back-way through Prior's yard, and made their way to a large meeting at Tiranney. This was anticipated by Mr. Brooke, who dispatched cars and everything he could to Castlecaulfield to bring back the force that were there, to meet the other parties if he could.

5397. Sergeant *Armstrong*.—I believe Father Quinn concurred in the view of sending out the Orangemen quietly, and agreed with Mr. Brooke?—Oh, yes, I think so.

5398. Is it, as far as you know, with the Orangemen considered to be a point of honour to occupy Shamble-lane upon those occasions—is it a point that they used to be fond of occupying?—I do not think from anything that I heard about it.

5399. What occurred in the evening?—I thought at that time it was about half-past three o'clock when a large party came into the town—Orangemen, as they have been described here, with all kinds of weapons.

They came in by Perry-street and Church-street, into the head of Scotch-street, and down Scotch-street. On their approach, Mr. Brooke and the Honorable Colonel Knox were with the police, the portion of the police that were then in the town—the ten or twelve that had been collected. There were left at the head of Irish-street, with Mr. Brooke, I think, six of them; and I, with four other men, were taken down by Colonel Knox to the end of Shamble-lane, and we were posted across Shamble-lane to prevent any of them crossing the lane, and remained there to prevent them from entering. When we came down opposite the lane, stones were thrown out from the lane, and into the lane from the other party, and I and every one of the men with me in fact got our share of the stones.

5400. Mr. Commissioner LEAM.—You were getting it from both sides?—Yes.

5401. Sergeant *Armstrong*.—Was Colonel Knox with you then?—Yes.

5402. At the time the stones were flying on both sides?—Yes.

5403. Was he doing his best?—Yes, and so were several of the gentlemen in the town.

5404. And exposing himself to danger?—Exposing himself, no doubt, to very great danger.

5405. And I suppose the police were on the street till a late hour on that night?—Yes.

5406. And at last it got quiet, and then there were summonses and so forth?—Yes.

5407. Were you here on the 7th of August?—I was.

5408. And was the appearance of the Orangemen then unexpected?—It was unexpected.

5409. What did you witness on that occasion—did you see the fellows coming up Scotch-street?—I saw them coming across from Carr's-row, across Scotch-street, past the hotel, and into this, George's-street; and I was at the end of the hotel, at the corner there where they past, and I done my best to identify any of the party.

5410. Did you get orders to do your best?—From my sub-inspector, but that was a thing—

5411. From your sub-inspector?—Yes; but that was an order we always have on occasions of this kind. On all occasions the first object is to endeavour to identify all the parties assembled.

5412. And did you honestly endeavour to do so that night?—I did.

5413. Were they a country party?—I have heard it said they were a country party.

5414. Was it a dark or a bright night?—It was in the dusk of the night—in the dusk of the evening.

5415. And you were not able to identify any of them?—I could not identify any men that were there.

5416. Were you up in the town when the names were taken down of some Catholics?—I was. We came round here lest an attack should take place at William-street, which was another point at which it was dreaded an attack would be made.

5417. Were those in the street firing shots?—When the drumming party had passed on down here, between here and Erasmus Smith's school, I heard one or two shots fired there.

5418. I do not know whether you accompanied Constable Clarke with the police out to Castlecaulfield and Ballygawley?—No, sir, I did not.

5419. You stayed in the town. There was a number of names of the Catholics taken down, and they were summoned and all that. Did you see any of them firing before their names were taken down, or did you take any of the names down?—I did.

5420. What were they doing at the time?—They were a very disorderly party, marching back and forward through the lane, and discharging firearms.

5421. And did you speak to any of them?—Oh, I did, several.

5422. What did you say to them?—I told them that the act was an illegal act, and that they should move off the street. It was then coming up to a late hour. It was after eleven o'clock before a name at all was taken. It was after eleven o'clock when the names were taken.

SEVENTH DAY

August 23.

Head-Constable Thomas Collins.

SEVENTH DAY.

August 23.

Head-Constable Thomas Collins.

5423. Had they been firing shots—whether in defiance or not—had they been firing shots?—They had.

5424. How long have you left this place?—I am out of this since October, 1870.

5425. You heard these drumming parties, of course, many a time?—I did.

5426. Do you think that the public peace and safety of the neighbourhood requires that there should be a stop put to them?—I think the drumming is dangerous to the peace of the locality—to any locality that it exists in.

5427. You are a head constable, and an intelligent man, and would you be glad of a power in the magistrates to punish them for drumming, without going into the question of motive or provocation or anything else, but merely the fact of their drumming?—Yes, and the magistrates have repeatedly expressed that wish to myself when I have been in communication with them.

5428. They have often expressed that wish to yourself?—They have.

5429. And have they expressed their anxiety to put an end to it?—Repeatedly.

5430. Mr. Commissioner EXHAM.—You mean the magistrates of this district?—Of this district. I did, often; because it occurs in this district.

5431. How long have you been here?—I was attached to Dungannon station from the end of 1859 to October, 1870.

Cross-examined by Mr. *M'Laughlin*.

5432. I think you paid great attention to the evidence of the other witnesses?—Well, I did not; some of them I did.

5433. Did you hear the Rev. Mr. M'Neece examined to-day?—I did not.

5434. Do you think the magistrates will put down those drumming parties?—I do not know.

5435. Do you think it is a sound opinion to say, that unless put down all over Ireland, the law will be violated here, and means found to evade it here?—I think it would be a very discontented thing if you put it down here and not elsewhere.

5436. There is a feeling that prevails here that, unless it is put down all over Ireland, it should not be put down in any particular place?—I would feel that way myself.

5437. A disorderly party that night marched up and down Shamble-lane—Shamble-lane, which has been very correctly called a bone of contention, is principally inhabited by Catholics?—It is.

5438. You will always find in the north of Ireland that butchers are Catholics, as a rule—was not it thought about the most vital point in the Catholic quarters to attack Shamble-lane?—Yes; I have often heard that.

5439. I think you said in answer to Sergeant Armstrong that the party were disorderly marching up and down the lane, and all that?—Yes.

5440. Did you see any Protestant gentlemen there at all marching up and down, or walking “promiscuously”?—During the night I saw one.

5441. You saw one, was his name Dunlop?—I have a difficulty in remembering, would you remind me of him?

5442. Lindsay, perhaps?—Yes; Mr. Lindsay had his daughter with him passing through.

5443. Were not there names taken of a lot of people merely walking back and forward, and doing nothing?—I do not think there were; I did not take the name of any person that I could not identify some particular thing that he was connected with.

5444. Would you be able to say whether what they were doing that evening approached, in point of criminality, to what the party were doing who had marched into the town that evening to attack their houses?—I do not know that any party marched into the town to attack their houses.

5445. You do not think that the Orangemen came for that purpose?—I do not think that either.

5446. Was there any doubt of the intention of the

Orangemen on the 12th of July, when they did come to attack their houses?—I had not the slightest doubt of the second party that came in on the 12th of July.

5447. You had not any doubt of their intention?—I really did believe that their intention coming in was to be revenged on the assault in the morning, and that is why the magistrates took the precaution of sending for the police to Castlecaulfield.

5448. The police were perfectly powerless on that occasion, I believe you yourself had to hide behind a pump?—I had not.

5449. Is not there a pump in Shamble-lane?—There is, I know it well; there is not a corner in the town that I don't know, nor a man in the town.

5450. Would not it be a wise thing if you were in the centre of a shower of stones—would not it be about the wisest place to go?—I think it would be a great deal wiser to go there, than run through 2,000 men with scythes and other implements.

5451. Then there is no doubt on your mind as to the virtuous intention, that is to say, to wreck houses, that actuated the Orangemen when they came in on the night of the 12th of July?—Yes; it was the evening.

5452. Was not there great alarm on the 7th August, when it was believed that the Orangemen were coming in to take revenge again?—I never heard that.

5453. Did you ever hear a rumour to this effect, that some further display was expected on the 12th of August, that is, five days afterwards?—I did.

5454. And that the Catholics had got up with scythes and pitchforks, and that they were coming in?—Yes; I did.

5455. And now, matters having attained that eminence, you had as many cavalry, infantry, and constables as would thoroughly stop it?—There were; well, they had nothing to do.

5456. That is to be regretted?—No; as on every other occasion that they have been here since the 12th of July, 1865.

Mr. Commissioner EXHAM.—If they were not here, I dare say they would be at it again.

5457. Mr. *M'Laughlin*.—Were there not breaches of the peace on the 12th of July, 1869?—I do not know.

5458. Don't you remember the Killyman affair—the orange procession from Dungannon to Killyman, and the stone-throwing and firing?—Yes.

5459. Do you know, in the present prejudiced condition of the human mind, that is not thought at all objectionable?—Not a bit.

5460. Not a bit?—From my experience that is what I meant.

5461. You are a man of experience, a strong-headed man; do you think that the Orangemen will continue to be too many for the authorities?—Oh, I think not.

5462. Then you think something will be done to put down these drumming parties?—So I expect.

5463. And I suppose there will never be any security for public peace until that something is done?—I do not know.

5464. Do you think they are compatible or consistent with the preservation of the peace, these drumming parties?—I do not.

5465. Therefore, would not the putting of them down be necessary to preserve the public peace?—It would be necessary that there should be a stop put to the drumming in such a place as this.

5466. What sort of a place is this?—It is a place where attack is subject.

5467. Subject to attack?—Yes.

5468. And where there was only a handful of Catholics, there would not be the same danger?—From experience I know that.

5469. In point of fact they are not strong enough?—I know other parts of this county where they do drum and I would know how far to go with them, and if they went any further that a breach of the peace would take place.

5470. I understand you went with the party with the drums?—Yes.

5471. To prevent them being attacked?—No; to

see what would occur; so as to be able to tell as fair a story as I could about it, and make as good a report as I could about it.

5472. Supposing any Catholic not having fear before his eyes, came out and attacked them, what would you think it your duty to do?—I would think it my duty to make the party that made that attack on the Roman Catholic amenable to the law.

5473. No, but where the Roman Catholic came out?—Where the Roman Catholic came out, and two or three attacked him, I would think it my duty to make them amenable to the law.

5474. You do not understand me. You say there are parts of the county where you would know how far to walk with a drumming party?—Yes.

5475. Do you mean a drumming party of Protestants?—I do.

5476. And you would know they would not go beyond a certain limit?—Yes.

5477. And I suppose the sounds of their drums would pass that limit?—Yes.

5478. It is the drums that are offensive. Now suppose that in that district there are very few Catholics, you think it would be safe there?—No doubt about it.

5479. Supposing in that district, sparsely populated as regards Catholics, some of the Catholics came out and did make an attack, what would you do to the Catholics; would not you think it your duty to arrest them for attacking the Protestant drumming party?—No.

5480. Supposing they were drumming along a road where the Catholics were few and some Catholics came out to attack them, would not you think it right to arrest the Catholics for attacking this drumming party?—No, I would not.

5481. Why?—Because I would see an inconsistency in it at once, for one or two Roman Catholics to come out and attack many hundreds of men.

Sergeant *Armstrong* (to Mr. M^cLaughlin).—He says he cannot conceive it.

Witness.—Yes.

5482. Mr. M^cLaughlin.—Do you believe that a smaller body, whether they have less prudence or more courage, have not often attacked a larger party?—Yes.

5483. Then cannot you conceive, although the

Sergeant suggested that you cannot conceive, an inferior handful of Catholics attacking those people; are your imaginative powers not equal to conceiving that?—Oh, I can conceive it.

5484. In such a case what would you then, as an experienced police officer, conceive it to be your duty to do with reference to the attacking party?—Oh, I see at once what I would do.

5485. I said it ten minutes ago?—I would arrest them. No, I would make both parties amenable.

5486. What would the Protestants have done?—The very fact of their being there would be harm.

5487. But that fact existed before the Catholics came out. Now, do you think it ought to be asserted that the circumstance of the Catholics being only few, is any palliation for the existence of the drumming parties?—No palliation for them at all; but the peace is safer where there is no probability of an attack.

5488. Mr. Commissioner *COFFEY*.—Quite so. You think there would be less danger of a breach of the public peace where they are not strong enough to resent it?—Quite so; but the resentment still is the same, and the cause of offence—

5489. Sergeant *Armstrong*.—Did you ever hide behind a pump or skulk away from the discharge of your duty?—Never.

5490. Now, you say that you saw that night of the 7th of August, Mr. Lindsay and his daughter?—I did.

5491. Did they appear to be going home?—Yes; they appeared simply to be taking a walk; I thought they were taking a walk down Irish-street.

5492. Were they part of the riotous mob?—No, they were not.

5493. Is Mr. Lindsay a respectable man?—Yes, Mr. Lindsay is a manufacturer in the town.

5494. Who is Mr. Dunlop?—He is a hatter in the town.

5495. Is he a respectable man?—Yes.

5496. Had he anything to do with the row?—Nothing whatever.

5497. Was he promoting it in anyway whatever?—Nothing whatever.

Mr. M^cLaughlin.—It never entered my mind, even I wanted to show that the Catholic party were harmless, for they never assaulted them or anybody.

SEVENTH DAY.

August 23.

Head-Constable Thomas Collins.

Head-Constable *Henry Stewart* sworn; examined by Sergeant *Armstrong*.

5498. Where are you stationed at present?—In Dungannon.

5499. How long have you been here in the force?—I came here in October, 1867.

5500. And you have been here continuously since? I have.

5501. Did you know anything of a drumming party playing on the Killyman road one night in December, 1867, at a time when the Catholic ceremonies were particularly observed in that part?—No, I did not.

5502. That being so, was there any special report made to you about it, or any special complaint?—No, not to me.

Mr. Commissioner *EXHAM*.—I do not think Mr. M^cLaughlin pressed anything about that.

Sergeant *Armstrong*.—About the drumming a quarter of a mile away, and the police hesitating about whether they would go on or not.

Mr. Commissioner *COFFEY*.—Except when they were drumming there in the neighbourhood of the chapel.

Sergeant *Armstrong*.—I do not think that such barbarians—

Mr. M^cLaughlin.—I simply proved the fact, and draw any inference you like.

5503. Sergeant *Armstrong* (to witness).—Were you here on the 1st of July, 1868?—I was.

5504. I refer to the occasion of the Orangemen coming back from Lisburn?—Yes.

5505. Just state what occurred as far as you know, as far as you saw?—As far as I know a small party went out at an early hour in the morning from Union-

place across the head of Irish-street, and passed away to the country, and about half-past ten on the same evening they returned again. The numbers then were larger. A considerable number came in at that time and the sub-inspector, Mr. Nicholson, and a party of some thirteen or fourteen in all—a party was brought down, and they were drawn up in front of Mr. Patterson's house, at the foot of the Market-square, thinking they were in a position to act there between any party that might assemble. They withdrew when no one met, and the force was drawn up in front of Mrs. Quinn's house leading into the corner or head of Irish-street immediately adjoining a place where a large number of loose stones were, where they were making some repairs to the road, and the drumming party came up, beating their drums, and as fast as they could walked across into Union-place, and a large number of people had collected in the head of Irish-street and some stones were thrown. On that occasion two panes of glass were broken in the windows facing the head of Irish-street.

5506. And then they dispersed?—As fast as they could walk the breadth of the Market-square to Union-place it was all over.

5507. And Mr. Nicholson the magistrate was there?—He was.

5508. And do you recollect whether you had intended that morning to take the names, going away?—That was the intention.

5509. And I believe they slipped off before you carried out your intention?—I believe so. I think their numbers were very small when they were going out.

Head-Constable Henry Stewart.

SEVENTH DAY.

August 23.

Head-Constable Henry Stewart.

5510. I propose to pass by the effigy, and I only ask you did you see the effigy?—No.

5511. You were here, of course, in April, 1869 at the time the windows of the chapel were broken?—I was.

5512. And you know that informations were taken?—I know they were.

5513. And that some women swore they saw two little boys flinging stones?—Yes.

5514. And three names were taken, and so on?—I made every inquiry about that case myself. I was employed for several days trying to find information.

5515. Did you honestly and to the best of your skill and experience exert yourself to discover who broke the windows?—I did everything I possibly could.

5516. And you were not able?—No; I could get no evidence to prove it.

5517. Were you here on the 12th of July, 1869?—Yes.

5518. When the Orangemen were going to Killyman?—I was.

5519. I believe there were two resident magistrates here at that time?—I believe there were.

5520. Major Forbes and another gentleman?—I do not remember exactly the two gentlemen's names, but I believe there were.

5521. Do you know there were arrangements made by the magistrates and the commanding officer of the troops, Colonel Oakes?—Colonel Oakes.

5522. And were you in command of a party of the constabulary?—No; I was not attached in the morning to any party particularly.

5523. Just state now what you observed in the morning of that day?—Well, in the morning of that day I was getting some people disposed of that were in custody from the previous night, and on my way to the bridewell with some prisoners I heard a drumming party coming in from some distance, in this direction, at the railway, and passing the courthouse I said to some of the men there that a drumming party was coming, and that a force should be sent down, and I passed on and gave over to the prisoners to the bridewell, and ran down, and then I saw two of the Dungannon party at the corner, and the drumming party were just coming forward at that time, and they passed between the rear of Mr. Wilson's little meeting-house there and the schoolhouse, and the road turns rather to the right at that place and passes down rather between the railway and what is called the Fowl-market, and a great number of people in the Fowl-market and about that road appeared all to be in a state of anxiety and all that, and one in particular which I saw at the time I said "go home, good man, and do not be here at all; it is a bad place."

5524. He appeared very excited?—Yes, and I even caught him by the shoulder and told him that was a bad place to be in and to go home, and he said that he would, and I passed on in front of him and I saw stones thrown over the wall between the meeting-house and the foot of Scotch-street, that is, the direction where the drumming party had passed, along the wall. The Fowl-market is lower than the road is, and if you were to stand in that market you could not see on the road unless you reached over the wall, and some stones were thrown over the wall, and I as well as some others, I think in all we collected I think as well as I can recollect there were some five or six men in all, and while so engaged in trying to prevent stones being thrown some stones were thrown back into the market again.

5525. The compliment was returned?—I saw Mr. Newton and then for the first time between the exertions of Mr. Newton and the police jointly we succeeded in getting that stopped, and we got across the foot of Scotch-street, so as to keep the parties separate at that particular point, and the drumming party got to the railway and the other party appeared to run up Scotch-street. I thought they were going down a place called Carr's-row where there is another point that I feared myself, and I left—I don't know whether the whole of us did—and ran on or ran in front of them and got up to the foot of Carr's-row to act between both parties

again, and the drumming party passed on and then finally they went down Northland-row and down by the chapel and away to the country.

5526. What year did you come here first?—In October, 1867.

5527. Now, Mr. Newton was with you on that occasion?—Yes, he was.

5528. And did you do your best to prevent any injury being done to any person?—I done my very best, and I am quite certain Mr. Newton done his very best.

5529. What sort of people were those that were in the Fowl-market—were they Catholics?—I should say they were. I could not say they were all, but I believe them to be such.

5530. And I suppose in this town, as in others, there was a poor class who would be unruly on such occasions?—Yes.

5531. And I suppose some of these were the poor Catholics?—Some of them were so. Some of them work in the mill. They were not all that class.

5532. Generally humble parties?—They were.

5533. Were you at the Killyman funeral?—I saw the party on that day. I was not at Killyman.

5534. I know you made an information about it?—I did.

5535. But you were not actually at Killyman?—No, I did not go as far as Killyman.

5536. But you lodged your information, and it speaks for itself. Now, do you know anything of fellows having on any occasion stopped at all or habitually to dinner opposite the resident magistrate's house?—No, I heard of it since it should have occurred, but I did not know of it.

5537. You did not know of it at the time it occurred?—No, I did not.

5538. Did you ever hear of it at the time?—No, I was not doing duty at that time for six months.

5539. And you did not know of it at the time?—No.

5540. Were you, in the course of your business and duty here, an attendant on petty sessions?—Oh yes, always; it was my business to be here.

5541. Were you able, from your observation of all that was going on, to know the general feeling of the bench in party cases—were you able to discover it from your observation of what used to go on?—I have been present on all those occasions.

5542. Was it your belief, from the way they dealt with the cases, that they were opposed to drumming parties, and anxious to put an end to them?—I always believed it; and in private conversation, away from the bench altogether, I would say myself, and the magistrates that attend the district told me in conversation themselves about other matters, that they were entirely opposed to it.

5543. And did they urge you to be watchful and do all you could to put an end to it?—That was my impression on all occasions; and I am of opinion that they ought to be put an end to.

5544. And do you think there is cunning enough among these fellows to evade you unless there was a stringent law?—In some cases they were too ingenious for me.

5545. Would you approve of a summary power being given to the magistrates to deal with them at once?—I think if they could be dealt with without going so much rounds, it would be very satisfactory.

5546. You mean, without taking into account the evidence of motive?—I do.

5547. But that the fact of drumming should be enough?—Yes.

5548. You think that the force of law would be enough to put it down?—Yes, I do think it.

5549. Cross-examined by Mr. *McLaughlin*.—I suppose there is no doubt that those things are dangerous to the public peace, as you have already said?—I do believe it.

5550. And calculated to lead to breaches of the peace?—I do. In very many cases they are calculated to lead to breaches of the peace.

5551. Further examined by Sergeant *Armstrong*.—We have heard something about an Orange hall at Killyman. Has there been an Orange hall or place built there for the Orangemen to meet in?—I believe so; I have not seen it.

5552. Was there any gathering or procession at all on the occasion of opening it?—I believe there was.

5553. What time was that?—I think it was the 16th of June last, as well as my recollection serves me.

5554. Did you make an information in respect of it?—I made an information about this, with respect to parties marching from this town on that day.

5555. And you swore that information?—I did.

5556. And was that in compliance with the general directions you had received from the sub-inspector and the magistrates?—It was.

5557. That they were a drumming party?—Yes.

5558. And did you swear that information truly?—I believed it to be true, and I believe still it is true.

5559. And you did not suppress anything—it was an honest, fair information?—Not to my knowledge.

5560. And you know that was sent on to the law adviser for his opinion?—I know it was returned to the assizes, and I attended there.

5561. What became of it?—I do not know what became of it. I remained at the assizes several days, and was told to go home, and I know no more.

5562. You were never called upon to attend before the Grand Jury?—No.

5563. Mr. *McLaughlin*.—You were saying that in some cases you would think it dangerous to the public peace?—I say in many cases they are dangerous to the public peace.

5564. Kindly mention a case in which they are not?—Well, as to any particular case—

5565. Give us an idea of what you meant by the limitation—by the exception?—Well, I give you an instance, and I believe it—the case that we have just been speaking of—the Killyman case—so far as I went with them on the day I was in company with them; I went about a mile out of this town, and I think from the time I joined them until I parted from them, there was not the slightest danger.

5566. Were they drumming along the road?—They were.

5567. Had they fifes and drums?—They had.

5568. Had they a flag?—No, I think, no flag.

5569. And why was there no danger?—Because there was no one there to oppose, and that is a very lone road, for there are only three dwelling-houses on the road to the distance that I went; and if I am to suppose anything, I suppose the parties living on it, I would rather suppose, were parties—sympathisers—with the party drumming on that day.

5570. But would you say that the same party, when it came nearer to town, would be more dangerous?—Oh well, I have seen them repeatedly go out where that party started from, and come in again, and nothing occurred.

5571. Where is that?—Milltown.

5572. And from their having repeatedly gone out and come in again, you would be inclined to think that a marching party of that description—there was nothing in it?—Oh, I would not go that length at all.

5573. But it is your deliberate opinion, that until somebody attacks them there is no harm in it?—Oh, I do not mean to convey such a thing at all. I have said, I believe, that they are harm.

5574. And I suppose you think that the risk to the public peace is greater in proportion to the population of Catholics?—Decidedly.

5575. And any part of the town of Dungannon is sufficiently populous to make it a risk here?—Yes.

5576. Mr. Commissioner EXHAM.—Since you came here in October, 1867, have the magistrates in private

spoken to you about doing your best to stop those drumming parties, and to take the names of offenders?—They have, and repeatedly.

5577. Mr. *McLaughlin*.—Was there any public condemnation by the magistrates of those drumming parties that you have heard personally?—I heard an opinion read from the bench here on one occasion.

5578. By which of the magistrates?—I could not state.

5579. Mr. Commissioner COFFEY.—Was it the law adviser's opinion?—It was the law adviser's opinion I have heard so much spoken of, and in compliance with that order I summoned the Killyman drumming party, and I even remonstrated with the drumming party that day, and I succeeded in stopping them. I urged on more than one occasion that day, telling them the consequences that would occur, and that any man there that day I would certainly summon him, and bring him before the Court, and some of those parties, whether through my advice or otherwise, afterwards on that day, returned to join a variety of amusements that was here that same day—some thousands of people that was collected for sports of various kinds, which was the object of my returning from the party at all.

5580. Mr. Commissioner EXHAM.—I understand you to say that on several occasions you have seen drumming parties leave Milltown, and come back to their lodge-room, without a breach of the peace being committed?—Yes.

5581. But that it is offensive, and nobody can tell when a breach of the peace may be committed?—Yes; nobody can tell the moment.

5582. Mr. Commissioner COFFEY.—Do you give it as your reason why this impunity has existed, that the moderate and respectable Roman Catholics of the town have dissuaded those people from going out in opposition to them—do you doubt that?—I have not the slightest reason to doubt it, because I think any day—any night—it is particularly in the winter season of the year, and it is at night generally, I believe that the reason that such a thing does not occur, is because the Roman Catholic party do not appear.

5583. That they submit to the influence of the persons I have referred to?—They appear to pay no attention, so far as I have seen, and they allow them to go on. And I believe that is the reason why.

5584. Mr. *McLaughlin*.—Is Friday night a particular night for these displays?—Well, as a rule, there are some Friday nights, but it occurs on other nights. It is of very frequent occurrence on some occasions, and then for a time it won't be so frequent for weeks.

5585. When was the last?—I could not give you the day.

5586. Was it a week ago?—I have not heard them for a week.

5587. I believe there has been nothing of the sort since this Commission opened, and I believe their absence on last Friday night was a remarkable thing?—It very frequently occurs on Friday night, and very frequently on the first Friday of each month.

5588. Mr. Commissioner COFFEY.—Did it come to your notice, or did you hear that this band had stopped before Captain Ball's lodgings, and played there?—I never heard of it until I heard it at the police inquiry, from anybody.

5589. I need not say that if you had heard of a matter of that sort, it would have engaged your attention at once?—It certainly would. I have not been doing duty for several months before now, from December to April, in consequence of severity I received from hardships of duty. I lost my voice.

5590. Mr. Commissioner EXHAM.—It would be a very great blessing to the police if they were put down?—I would be very glad for my part. It would save me a great deal of trouble.

SEVENTH DAY.

August 23.

Head-Constable Henry Stewart.

SEVENTH DAY.

Colonel the Hon. *William Stuart Knox*, M.P., sworn; examined by Sergeant *Armstrong*.*August 23.*Col. the Hon.
Wm. Stuart
Knox, M.P.

5591. You are member for the borough of Dungannon?—I am.

5592. Do you recollect the last election?—The last—yes.

5593. Now, do you recollect a matter that was referred to by a young man who was examined, that I, in a joecular way, called Fanny Jemmy (I really don't recollect his name)?—I do.

5594. Do you recollect the young man?—Yes.

5595. A clever fellow. He said that he saw something going on that he disapproved of at the Earl of Ranfurly's house?—Soon after the election, it might be the next day or the day after, I was sitting at dinner with some of my relatives and a friend, and we heard a great noise, and some light outside the gate. My idea was, that it would remain there, but I saw there must be a tar-barrel, and presently there rushed in a large crowd, and brought the tar-barrel in with them. I do not know exactly whom they were composed of, but there were a great many girls and children, and people of all sorts, and I then went out and thanked them for their cheers for me and my family, and all that sort of thing, and requested they would go home quietly. There were drums there no doubt, but I cannot say that it was anything but part of the election business, and certainly not one of the drumming parties. I firmly believe that there were people of different politics, if I may so for myself, who joined in one, who would have been enemies if an election contest had taken place, but who were anxious, like myself, to be friends with everybody after the election.

5596. You did not solicit this assembly, or in any way lead to it?—I had not the remotest idea until I heard the shouts and saw the light of the tar-barrel.

5597. You know this general subject of drumming parties, which have caused so much general anxiety in this neighbourhood. Do you disapprove of them?—Very much, indeed; not only on behalf of the Catholics, but in the interests of the Orangemen themselves.

5598. Are you an Orangeman yourself?—I am, and have been so for twenty-three years.

5599. Is there any oath of Orangeism?—There is none.

5600. No secret or oath at all?—There is nothing but a declaration.

5601. And is there a sort of ritual of regulations?—There is. It is perfectly public; anybody may see it, and it principally consists of the oath of allegiance. That is the principal part.

5602. You would be anxious to see those drumming parties put down?—Oh, certainly.

5603. Have you repeatedly, both publicly and privately, expressed that opinion in this district?—I have undoubtedly, and often.

5604. Have you to your brother magistrates?—Certainly.

5605. And have you to the police authorities?—Yes, I am sure I have.

5606. Have you since Captain Ball came here been in occasional communication with him treating him as a brother magistrate?—I have spoken to him privately about them often.

5607. And did you express the same feeling to him?—Certainly.

5608. Did you, so far as your Parliamentary duties and otherwise enabled you to be here at all, co-operate with the other magistrates?—I always came to the bench when here, unless something prevented me.

5609. You took a general part?—Yes.

5610. And communicated with Captain Ball as a brother magistrate?—I did.

5611. And did you act cordially and confidentially for the benefit of the public?—Most cordially and confidentially; and I may say more. I was asked by some one in authority how it would meet my views, a stipendiary magistrate, a resident magistrate being sent here, and I said I should be delighted—it would

give more confidence to the people, and give satisfaction; and I think I greeted Captain Ball in every way that one gentleman could greet another.

5612. And, now, up to the time of his giving his evidence, did he give you any intimation of his dissatisfaction with the course of practice of the magistrates?—Not the slightest; I had not the least idea of it.

5613. He had never expostulated with you in any way?—Not in the least.

5614. And did he concur with you in the main in what was done in party cases as well as in others?—I took it for granted that he would naturally express his views, and make them known if he did not concur with them.

5615. And with reference to flags on churches, do you approve of floating flags on churches on those anniversaries?—I think it is well known I do not.

5616. Did you attempt to take any steps to prevent it?—Well, I did, with the church in Dungannon.

5617. Give us an instance of that?—When there was a new church going to be built here, I felt, and always have, that a church was not a proper place for flags, whatever they were for, and I advised or asked the architect whether it would not be possible to build the tower so that no flag might be put upon it. I have no objection to a flag anywhere else, but on the tower of a church I do not think it is a proper place. The architect said that he would see to my suggestion, and I understood that had it not been that the clock was being put up this 12th of July, probably there would not have been a flag there on this occasion.

5618. It is your opinion that what might be regarded as an emblem of strife should never float from any temple of religion?—From any church.

5619. Would you approve of giving the magistrates summary jurisdiction to deal with those drumming parties, for the mere fact of the drumming in this part, irrespective of the question of tendency and probability of breaches of the peace?—I should not like it, because I think it is better that every man should be tried by a jury; but I think under the present circumstances it is very necessary.

5620. You think that the circumstances are so exceptional?—Yes.

5621. Now, I will not say a word about the effigy further than this, that you knew nothing, I take for granted, about what was going to be done?—I had nothing to do with burning Mr. Dowse. I would rather have received him as a friend than have burned him.

5622. Mr. *McLaughlin*.—I believe you have performed that operation?—Occasionally.

5623. Sergeant *Armstrong*.—I believe you and Mr. Newton, who were at table with some other friend, turned out when you heard that there was a disturbance?—Yes.

5624. And you were not treated with remarkable civility?—No; there were stones thrown, and our great object was to get the Orangemen to go down Carr's row, so as to avoid a row, and we succeeded in that.

5625. And do you honestly believe that having regard to the nature of the little political ebullition it was wiser not to follow it up by any prosecution?—Certainly; and we could not identify them.

5626. I believe that on some former occasion you exerted yourself in the town—so we have it in evidence?—It was in 1865; it was the time of the election. The election took place on the 14th, and I came here on the 10th or 11th, and I was here on the 12th. There was no expectation of any disturbance here, but an extra force had been got in consequence of some information about Castlecaulfield, and I began my day by canvassing for the election in Irish-street, and that part of the town, which I considered is the best proof that I did not consider there was any chance of disturbance, and after that I went down into the Park, having done my canvassing, and was sent for by Mr. Brooke to tell me of that first disturb-

ance, about the drums, of which I knew nothing. When I came up it was all over. I then heard that there was a large body of Orangemen collected at a place called Tiranny, and that they had been sent for by a mischievous person or persons, and that they were coming in force, and the master of my Orange lodge, Mr. Evans, went out to meet them, to do his best to stop them, and he was also district master of this part of the county, and they treated him with disdain, and pushed him aside, and would not have anything to do with him. I heard of this, and still thought I might try my influence such as it was. I met this mob at the top of Church-street near the Church, and I called upon them in the Queen's name, and for God's sake to stop and listen to what I had to say; but some of the leaders whom I did not know—they were strangers to me—called out, "Don't mind him, come on!" and one man with a thick bough that he had made a turn at my head knocking off my hat. I then took up my hat and returned as fast as I could to the police. I was running away from my friends. And I had already engaged with Mr. Brooke that he should divide the police force with me, taking part of it to the top of Irish-street, there to prevent at all hazards and risks these people coming down, as far as he could, and I was to take the other part with Sergeant Collins to Shamble-lane, and we drew up across it just in time, as these people were coming down; and I was very much assisted on the occasion by several gentlemen and merchants of Dungannon, who came forward and urged on these men to get them beyond Shamble-lane, and get them out of the town. The people in Shamble-lane, particularly the ladies, I must say, took to crying out at these Orangemen, and throwing stones, and it was with the greatest difficulty those gentlemen urged them on, and carried them past that point of danger. I hoped then that we were rid of the party, but I heard afterwards that they were coming round by Irish-street, and they were quite cleared away there, and I took a small body of police through Shamble-lane to the other side, and there, just as we got there, we found Mr. Coulson coming up with a body of men, and he did not quite understand, and he rather overshot his mark, and the consequence was that the party behind him rushed into Shamble-lane, and we were knocked aside at once, and a regular "scrimmage," I will call it, took place, and then we thought the best thing we could do was to drive these people down before us into Sloane-street, and they eventually went away, considerable damage being done by them on the way as they went.

5627. Wrecking along?—Yes.

5628. About how many were in your little party of police?—Five or six.

5629. And I believe there are only twelve in the town?—Only twelve in the town, I believe.

Mr. Commissioner EXHAM.—And we have heard that the other crowd were about 2,000.

5630. Sergeant *Armstrong*.—That is, a crowd of a couple of thousand men?—Yes.

5631. Were you here on the 7th of August, 1865?—No, I was not; I did not return to the country until the 22nd of August.

5632. You left for England straight?—Directly after the election. I was going to add that I knew Mr. Coulson as a magistrate for twenty years, I knew Mr. Brooke for eight years, and I am certain that they would have acted fairly on every occasion, and that they had no bias whatever in party cases.

Cross-examined by Mr. *McLaughlin*.

5633. Twenty-three years I think you say you are an Orangeman?—Yes.

5634. Are you the only Orangeman on the bench here?—As far as I know; they have all answered for themselves.

5635. Will you kindly answer my question?—To the best of my belief I am.

5636. I do not think you are such a harmless man after all. I have read a great deal of you in the newspapers. There is no doubt about your Orange

sympathies being twenty-five over proof?—Not on the bench, or as a magistrate.

5637. You will have no difficulty in discovering what I was at, for I am referring to the bench I may tell you?—I am merely answering your question.

5638. There is no doubt about it that you are a man of very strong opinions on Orangeism?—I do not know; that depends on what are called strong opinions.

5639. By comparison with weaker ones?—Those are my principles.

5640. I am not objecting, but only want the fact to start with?—Yes.

5641. One would think that the circumstance of your being a prominent man among the brethren would give you some little influence?—I am not a prominent man among the brethren; I am a simple member of the lodge.

5642. I do not think there is any simplicity about you, with great respect; you naturally thought when you applied to the brethren that day that they wrecked the houses that they would have attended to what you said?—I was not so sure of that; but I thought it better to try. I have too great an interest in the town to let it be wrecked without trying to save it.

5643. It is on your property?—No, it is my nephew's; it is not the same.

5644. You look a little sorrowful, sir, when you say that?—You may put your own construction on it.

5645. I think you mentioned Mr. Brooke; Mr. Brooke, I think, was connected with the estate?—He was the agent of the property.

5646. I think you said that always on the bench you act with independence and impartiality?—To the best of my ability.

5647. I suppose you would not go so far as to say that you might not be insensible to the influence of strong prejudices suggested by your strong opinions in your own mind?—I do not think I should.

5648. You have confidence in yourself to that extent?—I hope so.

5649. Do you think it clears a man's mind of prejudices to speak strongly?—When?

5650. At all times, in season and out of season. Would it not be natural for the people who know you have strong opinions to think that you may not be insensible to the influence of prejudiced views on the bench?—I do not think it more natural than it would be for people of the same opinions as mine with regard to people of opposite opinions.

5651. Do you think the opinion entertained by the local Catholic community here is an unnatural one, having regard to the facts that have been proved on this inquiry?—With regard to me?

5652. With regard to the bench generally?—I do not know whether it is or not. I know it is very unjust.

5653. Can you conceive anything more natural?—I cannot answer that question.

5654. You think it very unjust?—I will say for the Protestants, if we are to talk of that, with regard to Captain Ball, they must equally think the same of him, as the Roman Catholics must think of me, you know.

5655. I will not go into that because I have nothing to say to Captain Ball?—I did not intend to refer to Captain Ball as an individual, but merely as this bench.

5656. You avoid reference to Captain Ball by carefully mentioning his name; that is one way of avoiding reference to him?—No; I did not intend to be personal.

5657. Sure you do not mean to convey that all Protestants are Orangemen?—Certainly not.

5658. Now your attention has been called in the course of this inquiry to the facts that have been proved with reference as well to the 12th of July, 1865, as to the 7th of August in the same year?—Yes.

5659. And you thoroughly understand the evidence with reference to those dates and the occurrences therefore that have been narrated?—Yes.

5660. Now is it your opinion that the Catholics have nothing to complain of in the circumstance that they having been brutally attacked on the 12th of July, 1865, having armed themselves, as the inspector says,

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justly, to avoid an attack on the 7th of August in the same year from the same party, were all sent for trial, and no Protestants sent for trial on the 7th of August?—I have not a doubt on the subject; I think that if the case is as you represent it, it would be a most unjust thing, and I do not believe that any magistrate would do such a thing from this bench.

5661. Then are you able to tell me that any Protestant on that occasion was returned for trial—is not it the fact that none was?—I only wish that I knew anything about the circumstances, for I am sure that they cannot be as you have been advised to represent them.

5662. They have been deposed to by witnesses of veracity—?

Mr. Commissioner COFFEY.—He has given the answer that I should expect from any fair or generous-minded man. He has said “if the matter is as you represent it, it would be most unfair.”

Witness.—And I will add, outrageous.

5663. Mr. *McLaughlin*.—Then would you, if the facts are such as I say they are, thoroughly condemn that proceeding?—Certainly; but I do not know whether they are so.

5664. You are a little sceptical about it?—From hearing the evidence here.

5665. You think the drumming parties ought to be put down?—Yes.

5666. And you would, if you had it in your power, put them down?—Yes, certainly, if the law gave me that power.

5667. You do not think that the law at present gives you that power?—No, I do not, unless there is a breach of the peace apprehended.

5668. Would you generally, with reference to the drumming parties, apprehend a breach of the peace?—No, not generally.

5669. Now, a drumming party down along the bottom of Perry-street, and along Northland-row, and the like, would not be dangerous to the peace?—Well, heretofore, I have not known it.

5670. But what is your opinion now?—Well, I must own that after all that has occurred it might be dangerous.

5671. As far as along the line extending from Northland-row to Killyman-road?—Well, under the circumstances that were referred to about the chapel windows, I say certainly it ought to be referred to, and I wish to add my testimony to that of others, with regard to the breaking of the windows of a church or chapel, that I look upon it as a sacrilege.

5672. We all do that?—I know that publicly I do.

5673. Everybody knows that an attack on the house of God is a sacrilege; everybody knows that. According to the best of your judgment at what distance from the town would one of those drumming parties cease to be dangerous?—It would depend on circumstances, whether they were likely to be attacked or attack.

5674. Have you any feeling in your mind, from knowing the feeling of your constituency here, that there prevails amongst the Roman Catholic portion of them a strong feeling, such as has been elicited on this inquiry?—Against them?

5675. Yes?—Certainly, and all the respectable Protestants too.

5676. Now do you agree with those who say that the existence of that feeling tends to create risk of an opposing party getting up among the Catholics, and opposing the drumming party?—Well, I have heard that it has been got up in a neighbouring town, and I do not see why it might not be done here.

5677. You see from the bill of particulars that a great number of the things of which we complain took place on the 12th of July?—Which July?

5678. The bill of particulars which you have seen?—I do not know. I have been listening.

Mr. Commissioner EXHAM.—Several twelfths of July.

Sergeant *Armstrong*.—There are only two twelfths of July in the whole bill.

5679. Mr. *McLaughlin*.—Well, the whole month?—A large proportion of those affairs have taken place.

5680. Are you in favour of Orange processions on the 12th of July?—No, certainly not; but I am not opposed to the Orangemen meeting in private demesnes where they would not give offence to anybody.

5681. No, I have nothing to do with that; but do you disapprove of them marching along the road with drums and colours to those places?—I consider it is against the law.

5682. Or with drums and without colours?—I would interfere with them if I was there.

5683. But if the law remains as it is you would not be able to carry out your desire to put down those drumming parties?—Not unless the Government give one such an opinion as makes one understand that the law is otherwise. I heard it from Mr. Commissioner Coffey, but I think we should also hear it from the Government otherwise. If we go out and interfere with those parties and bloodshed takes place, I am afraid we, as magistrates, should be made personally accountable.

5684. Were you present in court yesterday when Mr. Courtney Newton was examined?—I was.

5685. And you understood his evidence, I suppose?—Yes.

5686. Did you hear his evidence this morning again?—Yes.

5687. Did you yesterday, in the examination of Mr. Newton and of another gentleman, hear me read copious extracts, which I do not intend to again inflict on the court, from Lord Chancellor Brewster's letter?—Yes, I did.

5688. They contained explanations of the law by the English and Irish judges?—Yes.

5689. You heard Chief Justice Monahan's opinion?—Yes.

5690. And you heard the opinion of the law adviser over and over again referred to?—Yes.

5691. And you heard the opinion of Mr. Commissioner Coffey, an experienced lawyer, and a judge of the second rank of jurisdiction?—Yes.

5692. And I suppose you were present at the glorious conversion and reformation of Mr. Newton? Could I induce you to imitate the example of that sainted man, Mr. Newton, and see the error of your opinions?—Well, I believe I could not imitate a better example, but at the same time I shall act as I think the law is, and carry it out to the best of my ability. I must act with independent judgment.

5693. Then, as I understand it, if that letter of Lord Chancellor Brewster, which was intended to supply the minds of the magistrates with what they required greatly—that is, correct notions of the law in such cases—if this meets your view, you will adopt what it recommends?—Well, I do not remember anything in it about such cases, and therefore it must depend on the case brought forward.

5694. But any exposition from a judge you would receive with blind obedience as a man ought to do?—I would appeal to the Commissioners whether they do not sometimes differ, as doctors differ.

5695. Mr. Commissioner COFFEY.—But there is a step beyond which they cannot go, and that is agreement between all parties?—I should certainly accept their agreement.

5696. Mr. *McLaughlin*.—You are only an ordinary magistrate?—No.

5697. You are a deputy-lieutenant also?—Yes.

5698. That does not make any difference—?—Yes.

5699. A chairman is the first rank, a puisne judge second, a chief justice third, and then you appeal to the House of Lords—the final court—where you will get into one day—?—Well, as I am not in any of those positions I need not inquire.

5700. Are you aware that inferior judges must take the law from the superior judges?—I was not aware of that.

5701. Then I must fill your mind with what everybody knows but yourself—?—Thank you.

5702. And that being so, and Mr. Commissioner Coffey having, with a clearness that is not to be excelled, laid down the law this morning at the time Mr. Newton recanted his views, do you still persist in saying that you have not power to put down drumming parties?—If we have that power Government should tell us so, and we should exercise it. I only wish to know what is the law.

5703. Did you hear Mr. Coffey this morning?

Mr. Commissioner COFFEY.—He is not bound to follow my opinion.

Witness.—I should be very happy to do so, but I find a difficulty.

5704. Mr. *McLaughlin*.—What would satisfy you—should it be that in every case the law adviser should say this is a case to send forward for trial? All the responsibility lies on me as representing the Government; you have nothing to do but to carry out what I tell you?—If he told us that every drumming party is illegal, and that it is our duty to put them down, we should do so if it was in our power.

Mr. Commissioner COFFEY.—That has not been said, nor have I said that or any approach to it. What has been said is very plain. Put aside drumming parties and do not consider them for a moment; but if any assembly or number of persons are collected and the magistrates have sworn informations before them, which they believe, that that assembly is calculated to provoke breaches of the peace by reason of its being obnoxious to any portion of Her Majesty's subjects, and is intended as a challenge, in that case it is the bounden duty, as I announce the law, for the magistrates to take the names of the parties and act so as to render them amenable.

Witness.—I perfectly agree with you there.

Sergeant *Armstrong*.—There would be great difficulty in having sworn informations beforehand, for they have not the slightest idea—

Mr. Commissioner COFFEY.—You know that a constable whose duty it is to watch for the preservation of the peace, if he sees a drumming party going along a public road or highway, and be of opinion that they are likely to provoke a breach of the peace, and that there is a strong spirit of exasperation produced by this display, intended as a challenge to fight, he is in time to swear an information that that is calculated to produce a breach of the peace, and summon them before the magistrates.

Sergeant *Armstrong*.—There it might be preceded by a sworn information; but take the common case of these men acting by a secret preconcert amongst themselves without the knowledge of any human being.

Mr. Commissioner COFFEY.—I think it is impossible to add anything to the accuracy of Mr. Newton's

definition, and that is that in districts that are thinly, sparsely inhabited by Roman Catholics, where no danger can be apprehended by reason of the smallness of their number compared with the great collection of drummers, he says, and I think accurately, no reasonable man would apprehend a breach of the peace or danger to the public tranquillity there; but the sting and exasperation remain amongst the minority though there may be no apprehension of a breach of the peace.

Sergeant *Armstrong*.—What would you do in that case?

Mr. Commissioner COFFEY.—I have not said what I would do, because there is great difficulty in it, but I would have no difficulty with drumming parties within earshot of Dungannon.

Mr. *Newton*.—That is exactly what I understood. You have corrected me so far.

5705. Mr. Commissioner COFFEY (to witness).—You say that you have a great objection to resorting to this summary jurisdiction, but would prefer a trial by jury?—Yes.

5706. Am I to understand that at present you think a summary jurisdiction would be necessary under the present circumstances?—I do.

5707. And would it remove the difficulty from your mind if that were for four or five years, until it had answered its purpose, and then that the law should be left as it had originally stood?—I think that would be more satisfactory.

5708. And it could be renewed if the necessity was found still to exist?—I think so. I may be allowed to say that I have constantly communicated with the chief secretaries of different governments as to sending troops on the 12th of July and other occasions where they were necessary.

5709. Mr. *McLaughlin*.—Now you have heard of orange meetings at Tyranny, Killyman, and those places?—Yes.

5710. I suppose you from your position with reference to the brethren attend those meetings?—Well, I have not done so, but there is no reason why I should not; because I have not been in the country.

Mr. Commissioner COFFEY.—Are you able to tell us, Sergeant *Armstrong*, when this is likely to be ended?

Sergeant *Armstrong*.—I do not think I have more than three or four witnesses at the outside.

Mr. Commissioner COFFEY.—And do you intend to address any observations?

Sergeant *Armstrong*.—If I say anything at all it will be very brief.

Mr. *McLaughlin*.—I intend to make a few observations in reply to the Sergeant when he sums up.

[Adjourned.]

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Col. the Hon.
Wm. Stuart
Knox, M.P.

EIGHTH DAY.—THURSDAY, AUGUST 24TH, 1871.

Colonel *Knox*, M.P., stood up in the gallery and said—May I say one word? Mr. Commissioner Coffey asked me a question about future legislation, I answered it to the best of my ability, and I have nothing to correct; but I wish to add these words—“I certainly think that either the Party Processions

Act should be repealed, and trust to the common law; or else, what I believe to be best, that an act should be passed prohibiting all party displays on public highways in Ireland. It would be the total destruction of liberty, if a legal meeting could not be held in private grounds.”

Sub-Inspector *Thomas Smith* recalled.

5711. Sergeant *Armstrong*.—I wish an explanation of what you yourself saw and know of the drumming party on the 16th of June in the present year—state it as fully as you possibly can?—About nine o'clock in the morning a drumming party left Miltown on the 16th of June in the present year, and they went to Killyman, where they opened a new orange hall. They had neither flags, nor banners, nor anything in that way, and they returned in the evening in a similar way, about half-past six o'clock; at one time they were something about 150 or so.

Mr. *McLaughlin*.—May I ask does this refer to anything in the bill of particulars?

Sergeant *Armstrong*.—It does not.

5712. (To witness).—Were they playing music?—They were beating drums and had a couple of fifes—three drums, I think. However, I brought the matter before the notice of the magistrates, and the magistrates considered as they had done nothing, that I might take what course was necessary to get an opinion on it. I submitted it to the Castle, and the opinion of the law adviser came down.

5713. Did you submit the facts?—Through the Inspector-General, I did.

5714. And was the law adviser's opinion obtained?—It was.

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5715. Did you report, as you have stated, that they were playing fifes and beating drums?—I did.

5716. And that they were going to Killyman, where there was an orange hall, or to that effect?—I did; I reported the full particulars.

5717. That they had not banners?—That they had not party emblems, but were drumming along the public thoroughfare in large numbers; they passed from Miltown up Perry-street, along Northland-row, and on to Killyman.

5718. Did you apply to the constabulary, asking any of them who were looking on, whether they could make an information that it was likely to lead to a breach of the peace?—I did.

5719. Did they offer to do so?—They did not; they said there was no likelihood of a breach of the kind, from the line of country they went through.

5720. Was all this fully and honestly reported by you to the Inspector-General?—Yes.

5721. And the opinion of the law adviser was had. Have you a copy of that opinion?—I have (witness produces document). That opinion is upon a copy of my report, which I don't want to submit.

5722. I won't use your report at all—did you give us the substance of your report?—It would be irregular to give the report.

Mr. *McLaughlin*.—If it is irregular to give the report, it is doubly irregular to give secondary evidence of the effect of it.

Sergeant *Armstrong*.—It is not secondary evidence.

Mr. Commissioner *COFFEY*.—This transaction forms no part of the bill of particulars at all.

Sergeant *Armstrong*.—I will tell you my object at once. It is to show the distinct opinion of the law adviser, that no offence whatever was committed in this transaction. It shows the necessity for an alteration of the law, and illustrates the whole of this matter.

Mr. Commissioner *EXHAM*.—As far as the magistrates are concerned, I don't see what they have to do with this.

Sergeant *Armstrong*.—They refused to take informations.

Mr. Commissioner *EXHAM*.—I know that.

Sergeant *Armstrong*.—They may have nothing to do with it, but it shows that they were perfectly right. This drumming party was not, on the facts stated, a party procession, that is, it did not violate the Party Processions Act, and I presume the law adviser went on that. Besides, it passed over quietly, and was not at any time calculated to lead to a disturbance.

Mr. *McLaughlin*.—I object to all this. The Sergeant has no right to make these statements.

Mr. Commissioner *COFFEY*.—You are perfectly right. The opinion of the law adviser cannot be given in evidence unless the report on which it is founded is given in evidence. Unless that is done we don't attach the slightest value to that opinion.

Sergeant *Armstrong*.—Then I will give the report in evidence.

Mr. *McLaughlin*.—Then what becomes of the evidence of Sub-Inspector Smith that the report is confidential?

Sergeant *Armstrong*.—I cannot help that. This is a public inquiry, and I deny that the rules of evidence apply to it all.

Mr. *McLaughlin*.—I thought the Sergeant recognised the objection to giving in the report.

Sergeant *Armstrong*.—While you made it necessary.

Mr. *McLaughlin*.—There is another objection. This is not a matter which we have charged in our bill of particulars, and we are placed in utter ignorance of what case the Sergeant is going to make upon it. I suspect, however, the object is to get in the benefit of an opinion upon a particular state of facts reported, and as to which we have no evidence to give, a state of facts too relating to a transaction with which we have no concern. I respectfully object to it.

Sergeant *Armstrong*.—You appear to forget the scope of the inquiry. I don't care whether or not there was any complaint of this transaction. The inquiry is whether the law has been duly administered in this

place by the magistrates. I give this case as an instance that illustrates the whole contention, as showing that the conduct of the magistrates is fortified by the law adviser of the Crown.

Mr. Commissioner *COFFEY*.—Undoubtedly. But on first principles you cannot give the opinion in evidence when the case is not in evidence.

Sergeant *Armstrong*.—The case must be given in evidence. There is no protection for it.

Mr. Commissioner *COFFEY*.—You certainly cannot read the opinion until you read the foundations of it.

Sergeant *Armstrong*.—I will read the foundations of it. There is no protection whatever. This is no state secret, nothing of the sort.

Mr. *McLaughlin*.—I respectfully but pointedly refer the Commissioners to this fact, which must be within their recollection, as it only occurred within the last few moments, that Sub-Inspector Smith said he did not want this report or case to be used, that it was a confidential matter. It cannot, I submit, be used.

Mr. Commissioner *COFFEY*.—I don't call on him or compel him to give it.

Sergeant *Armstrong*.—Does Mr. *McLaughlin* object to the opinion unless the report is read as evidence?

Mr. *McLaughlin*.—I do. I object to it in *toto*.

Sergeant *Armstrong*.—Then I ask you to adjourn the case until the opinion of the Attorney-General is obtained. There is not a more vital matter in the case.

Mr. Commissioner *COFFEY*.—There is no use of saying that. We are perfectly competent without the opinion of the Attorney-General to decide the matter. When we form an opinion judicially we will act upon it. If you are going to read the opinion of the law adviser, to lay the foundation for it, you must first read the report on which it is based.

Sergeant *Armstrong*.—I am going to read it. Here it is—

“Dungannon, 4th July, 1871.

“I beg to state that a drumming party with three drums and one fife left Miltown, south-west end of this town, on the evening of the 1st inst., at half-past eight o'clock, P.M., and proceeded on the road in the direction of Moy as far as Moygoshel, about a mile, beating the drums and followed by a number of persons about fifty. They returned about half-past ten o'clock, P.M., accompanied by a large number of all classes from 150 to 200. No party tunes were played, nor arms, flags, or emblems exposed. On their arrival at Miltown the drums were deposited in the orange lodge, and all parties separated peaceably. The constabulary from this were in their wake the whole way and back, and I was present at Miltown, and nothing occurred to disturb the harmony of the locality. The names of several of the party had been taken that could be identified by the constabulary. I brought the case before the magistrates at petty sessions, and they were of opinion no breach of the law had been committed and no further proceedings were taken. I may here state I asked the head and other constables who were on this duty before bringing the case before the justices of the peace if they or any of them were prepared to make an information that the drumming party in question was in their opinion calculated or tended to provoke animosity between the different classes of Her Majesty's subjects here, and they one and all said they did not consider it was, and would not make an information to that effect that it was. The drumming parties are of constant occurrence in this district and town, and will I fear be more so for some time; under these circumstances I beg to be instructed how I am to act.

“THOMAS SMITH, Sub-Inspector.

“A. W. H. Heard, esq., County Inspector.

“P.S.—The district passed through on the 1st by this party is generally populated by persons favourable to the drumming party, and no likelihood of any breach of the peace occurring.”

Now, here is the opinion of the law adviser:—

“This drumming party was not on the facts stated a party procession; it passed off quietly and was not at any time calculated to lead to disturbance or to endanger the peace of the locality and did not do so. In fact under these circumstances the magistrates took a correct view of the case. It is not possible for the law adviser to lay down specific rules which will govern each case which may arise, but when everything is peaceable, as in the present case, the constabulary should not interfere.

“W. M. J.”

Mr. Commissioner COFFEY.—Every word of which I indorse.

Sergeant *Armstrong*.—So do I.

Mr. Commissioner COFFEY.—When a case is sent up to the law adviser and the person sending it says there was no danger, no likelihood of danger, and that nothing occurred calculated to produce a breach of the peace, what else can the law adviser do than say “there is no case”?

Sergeant *Armstrong*.—And what can the magistrates do?

Mr. Commissioner COFFEY.—Of course, but that is a different state of things for that which we have had to consider.

Mr. *McLaughlin*.—Totally different, and I object to the evidence.

Mr. Commissioner COFFEY.—There was nothing done in this case which would authorize a prosecution. This was an occasion on which these parties carried out a purpose which they had a perfect right to do—having erected a hall, and it was a transaction utterly isolated, the police may have been perfectly justified in what they did; but there is on the face of the docu-

ment a statement clearly pointing attention to the fact that this proceeding was not calculated to produce a breach of the peace or ill-will—if any of the inhabitants of this town conceived that the walking of these men in that way was calculated to excite ill-will and create animosity and passion, and that they had come before the magistrates and swore informations to that effect, that would be a totally different thing—the police would not have been able to send up that report, and then the magistrates could have acted.

Sergeant *Armstrong*.—I venture to ask is there a Catholic in court who is not offended by that proceeding—not one.

Mr. *McLaughlin*.—The next question would be whether a matter like that can throw any light whatever upon the case we are investigating.

Mr. Commissioner COFFEY.—None whatever.

Sergeant *Armstrong*.—In my humble judgment it throws a great deal of light on it. It illustrates the thing exactly.

Mr. *McLaughlin* (to witness).—I don't ask you anything.

The witness retired.

Head Constable *Peter Fitzpatrick* sworn; examined by Sergeant *Armstrong*.

5723. Head Constable Fitzpatrick, how long were you stationed in Dungannon?—About two years and a half.

5724. At what period—from where to when?—From the 1st of December, 1863, up to the 1st May, 1866.

5725. Then you were here in the July of 1865 and the August, I presume, of 1865?—Yes, I was.

5726. What was your rank?—My rank was head constable.

5727. You were then head constable?—I was.

5728. In July, 1865?—Yes.

5729. Do you recollect that rather a small party of police was left to watch the town on the 12th July, 1865?—Yes, I do.

5730. I suppose you recollect Mr. Coulson going with a large party or detachment in the Castlecaulfield direction?—I do.

5731. Were you in town on that day when about two o'clock a party of Orangemen came in beating drums?—Yes, I was in town when a small party came in.

5732. Do you recollect a message being sent out for reinforcements to Castlecaulfield?—I do—with cars.

5733. Did they come in?—They did.

5734. And Mr. Coulson I presume with them?—Yes, I believe so.

5735. Just state as near as you can recollect what you witnessed from that for the rest of the day?—Well, I state what occurred from the commencement.

5736. Now go on from where the reinforcements came in.

5737. Mr. *McLaughlin*.—What hour was this?

Sergeant *Armstrong*.—After three o'clock.

5738. What magistrates were here?—Mr. Brooke had a party of men he was in charge of. Thirteen men he was in charge of that day, and Mr. Coulson came in with the other party from Castlecaulfield.

5739. Did you see Colonel Knox there?—They sent for him.

5740. He came?—He came.

5741. State what occurred, the entire of what you observed?—I was at the head of Scotch-street when the party came up from towards the Castle, a large party of men. Mr. Brooke was with me at the time. The party went down Scotch-street and we doubled down Irish-street, till we came to a street I believe called George's-street. The police were then in town from Castlecaulfield, and they had stopped the processionists at a point called Shamblane-lane. The police were then drawn across the street, and the processionists were at a standstill at the moment when I came up. That was the position of affairs then.

5742. Do you recollect the occasion of the crowd breaking through you?—I do, well.

5743. The crowd was a large one?—It was a large crowd.

5744. It has been estimated at a couple of thousand altogether, is that your opinion?—Not answered.

5745. Well, what happened?—There was a great scene of disorder until the Orangemen were got out of the town.

5746. The Orangemen got out of the town?—The Orangemen left the town.

5747. And I believe some of the force followed them a certain distance?—I believe they did.

5748. Were you one of the party that followed them?—I was not one of the party. I went up Irish-street with Sub-Inspector Smith and a party of police.

5749. Was there a firing of shots going on in the town while the orange party continued in it?—Were any shots discharged in the street, do you recollect?—I cannot swear I heard them.

5750. You know that wrecking of houses took place that night?—I do, that evening.

5751. You, I suppose, were aware of the proceedings taken by Mr. Coulson, and that a large number of persons were sent for trial?—I was.

5752. We have all that evidence. Now come to the 7th of August. Were you here that day?—I was.

5753. Did you foresee or expect any irruption of Orangemen that night?—I happened to be out with my men—

5754. Did you know it beforehand?—I did not.

5755. It was unexpected?—It was. I happened to be out with some men on the hill called Gallows-hill, walking in the evening, and I heard a drumming party over on the Castlecaulfield road. We went straight to the barrack and turned out every man there. We came down Scotch-street, knowing they would come down past the schoolhouse. By that time—I cannot call them Orangemen—but a party was coming on in several ways. Some went up this district, past the Courthouse, others went by the Railway Station. I sent for Mr. Smith and I think he joined me at the corner of Hughes's hotel. That was about eight o'clock. After some time the party that had assembled at the foot of the road ran on a bit and then came back towards us, and we were then standing at Hughes's corner; that was just the place, and when they were around us it was our instructions, and I myself spoke to the men to take every name we could. I did not know a single man in it.

5756. You did not know a man in it?—I did not know a man in it.

5757. Were they apparently, as far as you could judge, a country gathering?—They were strangers to me.

5758. After they got quiet and left the town, did

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you go back. Were the Catholics in alarm, securing the houses—were you in that part of the town?—I was, at a later part of the night.

5759. Tell what occurred?—At a later part of the night, coming to eleven o'clock or twelve. The Catholic party had assembled early in the day, and they were moving backwards and forwards and shouting, particularly at Shamblane-lane. Mr. Brooke was down with the police, and so was Mr. Smith with the men, but there was no interference beyond giving them advice and the like of that.

5760. How many of a force had you altogether?—All the available police that night was about twelve or thirteen men. That was I think the strength of the station—or ten men.

5761. Do you recollect any names being taken down of Catholics who were afterwards summoned?—There were.

5762. Who directed them to be taken down? Do you recollect getting any particular order from Mr. Brooke or anybody else?—I cannot exactly recollect the order, but I know we took their names, and I know Mr. Brooke and Mr. Smith knew we were taking down the names.

5763. No doubt of it. Tell me, what was the state of things going on then—what were the people doing? Just describe it.

5764. Mr. Commissioner COFFEY (to witness).—What did you take the names for?—They were firing shots and running to and fro shouting, and acting in that tumultuous way; and after we had advised them early in the night to leave. We remained about the place till near twelve o'clock. Then we took their names.

5765. Sergeant *Armstrong*.—Did you advise them to go home and go to bed before you took the names?—I am sure we advised among them for a long time in a kindly manner.

5766. And spoke to them to that effect?—Yes.

5767. At that time had these Orangemen ceased marching—had they left the town as far as you knew?—Oh, yes, they had left the town.

5768. How long before the names of the Catholics were taken down had these fellows left the town?—I dare say they had left the town somewhere about nine o'clock, between nine and ten o'clock, or about nine o'clock.

5769. At what time were the names taken down?—I should say coming up to twelve o'clock.

5770. You say you did not know of the other party that night?—I did not know a single man of them.

Cross-examined by Mr. *McLaughlin*.

5771. What part of Ireland are you stationed in at present?—Newry.

5772. How are they getting on there?—Not answered.

5773. Don't you think this party business on the 12th July and 15th of August is a curse of the country?—Well, I don't think it is a blessing.

5774. Don't you think it an unfortunate thing that for that night of the 7th August no persons were sent forward for trial but Catholics?—I think if they had been known they would have been sent forward.

5775. But it so happened that for the clouds of dust, the dulness of the night, and the lamps opposite they were not known?—There was not a single man of them known to me.

5776. What sort of a night was it?—It was a bright clear night.

5777. It was a bright clear night on the 7th of August. Were you in court when Mr. Smith was examined yesterday?—I was not.

5778. Did you agree with Mr. Smith in stating that the Catholics were armed for the protection of themselves and houses and property, and not otherwise; and do you believe him when he says that on his oath?—I would be slow to give an opinion as to what purpose they were armed for.

5779. Mr. Commissioner COFFEY.—What did they assemble that night for?—It occurred to me that they assembled apprehending that the others would come upon them.

5780. Mr. *McLaughlin*.—They thought they were going to get what they got on the 12th of July, when their houses were wrecked. (To witness).—Did they not wreck the house of Mr. Hayden, and the houses of other persons on the 12th July, 1865?—They did.

5781. Now, do you think these drumming parties dangerous to the public peace here?—I don't think they tend to create good feeling.

5782. But they tend to create bad feeling?—Well, you may make that deduction.

5783. Do you remember a report of the Catholics coming in their strength on the 12th of August?—(Not answered).

5784. Do you remember a report as to an apprehended invasion of Catholics on the 12th of August, 1865, five days afterwards, armed with scythes, pitchforks, and spades?—As to that I am not quite certain, but I know there was a force of police here on that day.

5785. Was there not a force of cavalry also?

Mr. Commissioner COFFEY.—We have that already in evidence.

Mr. *McLaughlin*.—We have.

Mr. Commissioner COFFEY.—Merely repeating it won't throw additional light on the transaction.

Mr. *McLaughlin*.—I act on the hint. Perhaps I did not show sufficient docility yesterday.

The witness withdrew.

Yagr Henry Burgess, esq., J.P.

Yagr Henry Burgess, esq., J.P., sworn; examined by Sergeant *Armstrong*.

5786. How long have you been a magistrate of this county?—I have been a magistrate since the 21st July, 1858, and that is thirteen years.

5787. Have you been in any way connected with the orange society?—Not in any way whatever. I don't think they would have me for a member if I wanted to be one; in fact, I have been told that in a number of ways I am not up to the mark.

Mr. *McLaughlin*.—You can do it now by your evidence.

Witness.—I don't desire to do so, whatever I may say.

5788. Sergeant *Armstrong*.—I believe in 1868 the 12th of July was a Sunday?—Yes.

5789. And they had a procession, I think, at Castlecaulfield—some gathering at Castlecaulfield—on the 13th of the month?—Well, there was a gathering at Castlecaulfield.

5790. With respect to that, did you, as a magistrate, go to that place?—I can scarcely say as a magistrate.

5791. But you went there?—I will tell you why I

made the remark. I went there rather in my private capacity as an individual. I was resident in Belfast at the time, and was only backwards and forwards. I came back for this occasion in time to be useful, to do my duty as well as I could. I had been written to to attend a meeting of magistrates to consult what was to be done on this occasion. I wrote to say I could not go, and I remember writing a letter to Mr. Smith—

Mr. *McLaughlin*.—That is scarcely evidence—

Witness.—Making certain suggestions of what I thought should be done.

Sergeant *Armstrong*.—We all know there is a sort of preliminary meeting held.

Mr. *McLaughlin*.—A caunter before the race.

Sergeant *Armstrong*.—Not that exactly, but a preliminary meeting to have the measures discussed prudent to be taken on the 12th of July.

5792. (To witness).—Tell us what you approved of at Castlecaulfield, and what you did to induce the people to obey the law?—I wished to tell this, to show how I went there in my private capacity. I went on

Sunday morning to Mr. Lyle to see what was to be done under the circumstances. I expected a marching of Orangemen into Donoughmore. If I am allowed I will state what was recommended in that letter——

Mr. *McLaughlin*.—No ; produce the letter.

Mr. Commissioner COFFEY.—This is an inquiry into the conduct of the magistrates. They are entitled to explain what they did, what arrangements they made, the question being one of the *bona fides* of the administration of the law.

Sergeant *Armstrong*.—I deny that there is any strict rule of law about a matter of this kind.

Mr. *McLaughlin*.—You did not deal with Mr. O'Neill in that way.

Mr. Commissioner COFFEY.—As circumstances arise we give our judgment.

Mr. *McLaughlin*.—Would it not be better, if he had the letter, to produce it ?

5793. (To witness). Have you the letter ?—No.

5794. Mr. *McLaughlin*.—You lost it ?—I have a copy of it. It was Mr. Smith it was written to.

Mr. Commissioner EXHAM.—It was an act of one of the magistrates.

5795. Sergeant *Armstrong* (to witness).—Did you confer on that Sunday with Mr. Lyle as to preserving the peace of the district on the next day ?—I did.

5796. And then you went to Castlecaulfield yourself ?—I did, in consequence of the opinion of the resident magistrate who was sent down.

5797. Who was that ?—Mr. Beckett.

5798. I suppose he acted for the best. He took that view of it ?—He did.

5799. He was sent down specially in charge of the force ?—Yes.

5800. Tell us what you did on the 13th ?—I endeavoured to use my influence with them—possibly more as an individual than as a magistrate.

5801. Did you speak to them ?—I went up to the party ; I found them just starting from Castlecaulfield to Donoughmore.

5802. Did you regard it as an illegal procession from its aspect ?—Not strictly according to the letter of the law, but in the spirit of the law I considered it to be so ; therefore we could not take hold of them in any way.

5803. What advice did you give them ?—I advised them strongly not to go into Donoughmore, because I said it was only likely to raise a disturbance—that the people there were mainly of an opposite creed, and it was calculated to raise a disturbance.

5804. There is a mixed population there ?—There is a considerably mixed population in Donoughmore.

5805. You advised them ?—I used all my endeavours to induce them not to go on.

5806. What did they say to you in answer to that ?—There chanced to be amongst them a man named—I suppose I need not mention the name ?

Sergeant *Armstrong*.—No.

Witness.—He was a man who had been some time resident in Dundalk—in fact, he had come from Dundalk for this occasion, and he said to me in the most energetic manner, “Sir, I have just come from Dundalk, and there I have seen things practised in public. I have seen the people marching, green ribbons, and harps without crowns, and sunbursts, and every sort of disloyal emblem, and the magistrates and police officers all standing by, and not a man saying a word. Come on, boys ; listen to him no more”——

Mr. *McLaughlin*.—Don't excite yourself.

Witness.—I am only illustrating the manner in which the man spoke to me.

5807. Sergeant *Armstrong*.—Did you explain to him that he ought to observe the law in his own person ?—Yes ; I said, “Whatever other people do, that is no reason for you to do wrong, or break the law in any way ; if you do you don't behave as a good citizen,” or words to that effect.

5808. What did he say to that ?—I wish to add that if he spoke loud, the drums spoke louder. They came buzzing about me like angry bees, and did their best to drown my words altogether.

5809. Did they yield to your advice ?—They marched on to Donoughmore.

5810. And had their own way ?—They had their own way. I accompanied them, in the hope of being able to afford assistance, should anything occur. Although my influence was very far gone, I thought I might exert any little that chanced to remain.

5811. Is it your opinion that expostulations of that sort tend to impair any little influence with the parties you might possess ?—I think they do impair it, for that answer is constantly thrown out. In season and out of season, by word and by act, I do my best to discourage these things, but that is the answer I always get, and I must say it is an unanswerable answer.

5812. Do you personally strongly disapprove of these drumming parties and processions ?—Most strongly ; and when I just said I considered that an unanswerable answer, I may add it is my strong opinion that that don't justify them in any way in breaking the law, or doing anything that might lead to a breach of the law.

Mr. *McLaughlin*.—I think this explanation will not tend to keep them quiet.

Sergeant *Armstrong*.—He cannot help that. He is only explaining what occurred when he remonstrated with these people.

Witness.—With respect to the observation Mr. *McLaughlin* has made——

Mr. *McLaughlin*.—What observation ?

Witness.—That my explanation would not tend to keep them quiet. I suppose you meant to say I am rather encouraging them ?

Mr. *McLaughlin*.—No.

Mr. Commissioner COFFEY.—The observation he makes—it is idle to blink it—is that the remarks you have made have a tendency rather to perpetuate than to abolish——

Mr. *McLaughlin*.—That I deliberately say again.

Mr. Commissioner COFFEY.—I always like plain speaking. That is what Mr. *McLaughlin* intended to convey.

5813. Sergeant *Armstrong* (to witness).—Did you hear the observations made from the bench here as to the duty of magistrates to exercise their influence, that is, their private influence ?—Yes.

5814. You are giving an instance of what you did ?—I am.

5815. And stating the answer you got ?—I am stating it.

5816. Do you think it calculated to perpetuate processions or drumming parties ?—No ; I wish to add, and I was going to say to Mr. Commissioner Coffey, that if I never say a word, or if I spoke ever so much, and if all the magistrates in the north of Ireland spoke ever so much to encourage them in going on, it would make no difference ; the feeling is in the minds of the people, and whether you speak or not you cannot make that greater than it is.

5817. By anything said or left unsaid, that is your impression from interviews ?—From constant interviews and talk.

5818. And you have been constantly urging them, to use your own expression, in season and out of season, by your language and conduct, to discontinue and put an end to party processions ?—Oh, certainly, to discontinue them.

5819. Have you any wish to see them perpetuated ?—No. I wish to see them put an end to, and I would like to see them put an end to by the good sense of the parties themselves. I think they are of very little credit to the country, some of those displays.

5820. And with a view to the future peace of the country ?—Yes, so far I may go.

5821. Do you believe that the peace and security of the State require that there should be an end put to drumming parties and processions altogether ?—I will not give you a direct answer to that.

5822. Answer it any way you please ?—I must qualify it. I think it would not tend to the peace of the State if an end was put to these drumming parties so long as illegal, disloyal parties—professedly dis-

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loyal parties—in other parts of the country were allowed to continue, and were not put down by the strong hand of the law.

5823. You think the strong hand of the law should be applied to all?—I think so, and I think more—it insults and irritates the Orange party very much to find themselves put in the same category with disloyal men. They (the Orange party) affect to be loyal, and I am sure they are loyal after their fashion, although they show their loyalty sometimes in rather—

Mr. Commissioner COFFEY.—By persisting in breaking the law.

Witness.—They don't consider they are breaking it.

Mr. Commissioner COFFEY.—There is not a magistrate on the bench, there is not a reflecting man in the community, that should not be persuaded that it is by a sincere and earnest co-operation with the law that the public peace is upheld. All governments, all good order, is founded on that belief.

5824. Sergeant *Armstrong* (to witness).—Would you approve of an amendment of the law, a more prompt and enlarged jurisdiction than they have as to some of the cases, in which they could deal with drumming parties?—Well, I have considered that question since it was asked yesterday, and I have here the opinion of an eminent judge, if I may be allowed to quote one on the subject.

5825. Sergeant *Armstrong*.—It is very *apropos*, I dare say.

5826. Mr. *M'Laughlin*.—Who was the judge?

Witness.—I don't know, but if you look into Brewster's letter you will find it.

5827. Sergeant *Armstrong*.—Is it Baron Bramwell?

5828. Mr. Commissioner EXHAM.—Or Baron Parke?

Witness.—This is what he says:—

"Whether a meeting be of a lawful or unlawful description must depend on the circumstances under which it is held, the manner in which it is brought together, and the conduct and demeanour of those who took part in it. These being questions of fact, must be submitted in all cases to the judgment and determination of the jury—first of the grand jury and then of the petty jury—if a bill of indictment be found, and it is not possible for the judge to lay down, as a matter of law, the precise boundary between a lawful and unlawful assembly."

Much, therefore, as I would wish to see these assemblies put an end to, and dealt with by law, I think it would be rather ignoring the liberty of the subject when so eminent a judge—declared to be such by Lord Chancellor Brewster's letter—has given us his opinion that these men are entitled to not only one jury, but two, the grand and petty jury as well.

5829. Sergeant *Armstrong*.—You would rather send them to sessions, and let the magistrates' power remain as it is?—I would rather send them to sessions or assizes.

5830. To some jury or other?—Yes.

5831. That is your idea?—Yes. Because—I trust I am not out of order when I say that the state of things in Ireland is rather dependent on the conduct of the Executive, which has the control, more or less, of the whole country; and if, as I believe firmly to be the case there, party displays in the north have increased, as they have increased of late years, in consequence of rival displays in other parts of the country, I don't think the Executive should put the burden off their own shoulders on the magistrates here in the north to keep the peace or to keep the law. It should be done from the central authority, which would be regarded by all, north and south.

5832. Your opinion is in favour of the interposition of a jury, having regard to that opinion of Baron Parke?—Yes.

5833. That it is impossible for the judge to lay down any abstract definition of an unlawful assembly, and it is better to have each case disposed of on its own merits, the judge instructing the jury fully on the circumstances?—Yes; to tell the jury to give the benefit if any doubt arose.

5834. Mr. Commissioner COFFEY.—You would not leave it to the magistrates at all?—I object to leaving it to the magistrates.

5835. Do you object to giving magistrates a summary power?—Yes.

5836. Sergeant *Armstrong*.—You suggest some alteration of the law, but don't favor the idea of a summary jurisdiction?—

Mr. *M'Laughlin*.—He says the Executive should not put it off their shoulders on the magistrates.

Witness.—Yes.

5837. Mr. Commissioner COFFEY (to witness).—You would not have the law remain as it is now?—I want to have a different law. I think the law is very unsatisfactory.

5838. Sergeant *Armstrong*.—Would you hold every drumming party, having regard to the use made of these drumming parties in past time, and their manifest tendency and offensiveness—would you constitute any drumming at all an illegal offence *per se*?—Yes, in any part of the country, even where there are no Roman Catholics, and I would do it on this account—that there might be no excuse for illegal assemblies to be held in any other part of the country where no Protestants are. With the press we have—now every man has his newspaper in his hand, and the Orangemen have long ears—every Orangeman in the north of Ireland, and in every other part of Ireland, has a sensitive ear; mind you—

5839. Mr. Commissioner COFFEY.—Don't you think other people have it also?—Certainly, but I wish to say that the Orangeman's ear is just as sensitive as the ear of the most drum-hating Roman Catholic in Dungannon; and that the Orangeman's eye is just as much hurt, and he feels just as much at processions taking place in the south of Ireland, as any of these gentlemen here feel a drumming party in Perry-street, or any other street in Dungannon.

5840. Sergeant *Armstrong*.—Your opinion is that they all feel offended?—They all feel offended.

5841. And justly offended?—Well, justly offended, and it leads them to acting contrary to common sense; that is, they go drumming about the town, which is very discreditable to themselves and injurious to the peace of the community, and then it causes other breaches of common sense, and irritation too, for it provokes innocent people, and it leads those innocent people to take a line of their own, and accordingly we have seen within the last few days a procession of Roman Catholic gentlemen of Dungannon and its neighbourhood marching up to this witness box, and drumming into your worships' ears complaints against that row of innocent gentlemen in that box there.

5842. Your view would be this—I wish to collect it as well as I can—that having regard to the state of the country, the prevalence of these drumming parties, and the tendency of them, they should be declared illegal in themselves?—They should be declared illegal in themselves.

5843. But you would rather have the intervention of a jury to establish the facts and bring home the offence?—Yes. But I would guard myself. My opinion is that all processions should be held illegal, and to save the feelings of those men who profess to be loyal, that there is a wide distinction between them and those who profess to be disloyal; that there should be one law, which should be general.

Sergeant *Armstrong*.—Very well. I hope the hint will be acted on in the proper quarter.

Mr. *M'Laughlin*.—Having heard your evidence you may go down.

5844. Mr. Commissioner COFFEY (to witness).—A word or two before you go down. With respect to this extract you have read from Baron Parke's opinion. Let me call your attention to this, that that is dealing with the state of the law as it now exists?—Yes.

5845. You wish to have the grand jury and the petty jury in operation in putting in force the law dealing with an illegal assembly, calculated to produce a breach of the peace?—Yes.

5846. That law as it at present exists?—Yes.

5847. And that any person made amenable as one of an illegal assembly should have the advantage of having these two juries and the interposition of the judge?—Yes.

5848. But to put the law in motion the magistrates must act in the first instance?—Certainly.

5849. The magistrates are the persons to put the law in motion, and by no contrivance at present can the Executive throw that responsibility off the magistrates?—Oh, no, I would be sorry to have it thrown off me in any way.

5850. After making that explanation I wish to call your attention to another matter. Do you conceive these drumming parties that we have evidence of being of more repeated occurrence within the last two or three years—do you believe them to be chronic in this neighbourhood?—I believe they are, and they have become more so of late.

5851. And you say the feeling that causes that here is that displays in the south are not dealt with?—I consider that has intensified their feeling.

5852. I know something of the south, and let me call your attention to this. Do you recollect a procession in Cork, in the neighbourhood of Blarney, in which the magistrates acted, and made the parties amenable, and that these parties were brought to trial and sentenced to various terms of imprisonment, from two years downwards to six months with hard labour?—I don't for a moment impeach the magistrates; it is the deficient state of the law itself.

5853. Do you recollect a procession of a disloyal character having taken place at Cork within the last twelve months, and the parties there being made amenable by the action of the magistrates, and brought before the assizes and sentenced to various terms of imprisonment with hard labour—men, women, and boys?—I am not conversant with the facts of that case; it is merely the general fact I allude to.

Mr. Commissioner COFFEY.—I wish to call the attention of the sober-minded portion of the Orangemen of this district—if my words could have any influence with them—to this, that their minds should not rest under the total misimpression that the Government are not active and energetic in putting down with a strong hand processions and demonstrations where the law enables them to act. Within my own memory—and the memory of my friend sitting beside me—(we are members of the same circuit)—at every assizes we have gone for the last four or five years, where these displays have occurred, we have unmistakably seen people in the dock, and we have as unmistakably seen juries convicting, and judges performing their duty of sentencing the guilty to severe punishments.

Witness.—I impugn neither the magistrates nor the Government; it is the law that is in the unsatisfactory state it is.

Mr. Commissioner COFFEY.—I quite concur with you. But no misimpression should prevail in this part of the country as to the action of the Executive. The action of the Executive has been—and this I don't confine to any particular Government, it applies to Governments both liberal and conservative—the action of the Executive has been to put the law in motion whenever it could be done everywhere. And it has been so, particularly in the south of Ireland. I recollect myself being engaged in one case that particularly arrests my attention. It was the case of a procession coming out to Blarney with flags, and banners, and music. Nothing occurred; no outrage was committed, no violence or breach of the peace occurred, but seventeen or eighteen of these processionists were identified, their names were taken by the police, who acted with the discretion that you would expect from a trained body; they quietly took the names of the leaders, put them in the dock, the parties were tried and convicted, and as well as my recollection serves me some of them got two years imprisonment with hard labour.

Witness.—But the fact, unfortunately, remains with all this exertion, and all that is done, that the law has occasionally within the last year been brought into contempt.

Mr. Commissioner COFFEY.—Even if that were so, surely it is the duty of the Government, the magistrates, and the police, to act in unity for the purpose

of putting these illegal displays down, no matter what occurs in other quarters of the country.

Witness.—Certainly.

Mr. Commissioner COFFEY.—And to make due allowance for any difficulties and obstructions that may exist in putting the law in motion where there is an honest desire to do so.

Witness.—I think so—your words are most useful to calm the excited feelings of the Orange party of the north, for they labour under what they consider a grievance, whether rightly or wrongly.

Mr. Commissioner COFFEY.—My own experience has enabled me to state what I have said. I have sitting beside me a gentleman who belongs to the same circuit, and an eye-witness to the transaction I speak of. The public journals record it—in the returns to the House of Commons it will be found. It is perfectly idle, and an utter mistake to suppose that the action of the Executive is not brought to bear promptly and heavily on all who violate the law in the south and every other place in this island.

Mr. Commissioner EXHAM.—Carrying out what Mr. Coffey says, in the county of Kerry I have seen a number of persons in the dock for creating a disturbance by collecting and lighting tar-barrels to commemorate an event in Tipperary; I prosecuted them with other counsel in Tralee; they were convicted, and I think I was present when Judge Fitzgerald sentenced some to twelve, others to six, and others to three months imprisonment, according as it was their first offence or not.

Mr. Commissioner COFFEY.—And the verdicts were given by mixed juries.

Mr. Commissioner EXHAM.—By mixed juries. Another matter that occurred there made it necessary for me, in the discharge of my duty as Crown prosecutor, to apply to have an adjourned assizes for the county of Kerry. The application was granted; and at the adjourned assizes, these parties, within less than a month from the date of their offence, were tried; and a lad of twenty-one, I think named Connor, who was the ringleader of the party, was sentenced to twelve months imprisonment.

Witness.—These facts are not known. They may not have appeared in the northern papers; but now they will be known.

Mr. Commissioner EXHAM.—If parties unaware of what is done in other places—unaware that the Executive do their duty, that the magistrates do their duty, that they instruct the police to do their duty, and they do it—if parties in ignorance of all this think, speculating on how justice is administered in other places, that they ought not to be amenable to the law here, it is a great mistake.

Witness.—With respect to what Mr. McLaughlin said as to the effect of my words on the Orangemen.

Mr. McLaughlin.—In the strongest language conformable with the most profound respect I repeat what I said.

Witness.—I wish to state that on every occasion I shall, as I always have done, endeavour to keep the peace—to put down processions that may be, in my opinion, illegal, and I shall be very happy to do so without any regard as to whether I may make myself popular or unpopular. If Mr. McLaughlin had not stopped me, I would have stated facts that would have made me more unpopular with the Orangemen than I am at present.

Mr. McLaughlin.—I am glad you did not.

Witness.—I hope they think I am honest at all events.

5854. Sergeant Armstrong.—As I understand, the answer you gave the man who relied on the law having been broken in another place—that even if the law was violated there, it was no excuse for him, and that he ought to obey the law?—Yes.

5855. That was your argument?—Yes.

Mr. McLaughlin.—What the Sergeant says is quite correct. But this gentleman volunteered himself—the Sergeant was too wary to give him the opportunity—the statement, “in my opinion, it was an unanswerable answer”—that was the first blood he drew.

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Sergeant *Armstrong*.—The “first blood.” That is an extraordinary expression.

Mr. Commissioner EXHAM.—He did say that he felt it difficult to give that an answer, but that at the same time he told the people that it really was no excuse for breaking the law.

Mr. *McLaughlin*.—But he tells the people here it is an unanswerable excuse.

Mr. Commissioner EXHAM.—I don't think that is the fair interpretation of it.

Mr. *McLaughlin*.—It comes to that.

Mr. Commissioner COFFEY.—It does not come to that. He said, and perhaps said indiscreetly, that that was an unanswerable answer; that is, I infer from the observation, that he himself would find it difficult to give an answer to that, if put before him. And I confess, if I was of opinion that the law was systematically permitted to be violated elsewhere, I would find it very difficult to give an answer to it. But my knowledge and experience—my actual personal experience—enables me to testify to the contrary, and to say that the law is successfully vindicated quite as often, if not oftener, in the south than in the north.

Witness.—I would say one word more. On that occasion, the Orangemen appeared to be anxious to do their utmost to keep within the law; as, for instance, a man had something like a rosette in his button-hole, and I said, “take that off, it will be construed into a party emblem.” He took it off immediately; and a friend went over to take it off, if he would not take it off himself. According to their opinion of the law, they were determined to keep within it.

[The witness then retired.]

Sergeant *Armstrong*.—I beg to announce, which I do with great pleasure, that we have exhausted the evidence we propose to offer; and now is the time for my friend to declare whether he desires to go into any further evidence, or whether there is any person here who wishes to throw any light on the subject of the investigation.

Mr. *McLaughlin*.—I have no hesitation in declaring that I wish to offer no further evidence.

Mr. Commissioner EXHAM.—There is one matter I wish to ask Captain Ball a question or two about.

Captain Ball came into the witness-box.

5856. Mr. Commissioner EXHAM.—Do you recollect, Captain Ball, sending up a memorandum to the Castle last year, in March, a memorandum written out by Mr. Newton?—I don't think I sent up Mr. Newton's memorandum.

Mr. Commissioner COFFEY.—Mr. Newton's memorandum was to the difficulty the magistrates felt.

Captain Ball.—Allow me to see the paper. Yes, now that I see it, I recollect that I sent up this along with the report.

5857. Mr. Commissioner EXHAM.—Just so. Do you recollect getting down the law adviser's opinion with respect to that memorandum?—I got it, but I don't recollect exactly what the purport of it was. (Document handed by the Commissioner to Captain Ball). Yes, I received this.

5858. You received that?—Yes.

5859. Do you recollect having communicated that to the magistrates?—To the best of my impression I did. That is my recollection, decidedly.

5860. Mr. Commissioner COFFEY.—It is your impression you did, but are you not certain?—I think I even showed it to Mr. Newton, but I may be mistaken as to that.

5861. Mr. Commissioner EXHAM.—It was returned from the Castle as “the annexed opinion of the law adviser for your information and guidance”?—Yes.

5862. I want to know whether you considered that only for your own information and guidance, or for the information and guidance of the magistrates?—My impression is, that I made it known to the magistrates, but I really cannot now say. That, however, is my impression.

5863. Mr. Newton is under the impression that he never heard of it.—Perhaps Mr. Newton's recollection is right. I won't undertake to say it is not.

Mr. Commissioner COFFEY.—I think Mr. Newton won't undertake to say “yes” or “no.” He has no memory of it.

Mr. *Newton*.—Precisely.

5864. Mr. Commissioner COFFEY (to Captain Ball).—We have already gathered from your evidence that you distinctly say you never intended by the observations you made at the police inquiry to impute corruption or partiality to the magistrates?—Most distinctly.

5865. And you had no idea whatever of what questions you were to be asked?—Not the remotest.

5866. You certainly see that the language in the report of what you said, signed by yourself, is susceptible of that meaning?—No doubt it is.

5867. Taking it as prejudice, not corruption, when you made the statement, whatever it was, had you in your memory the representations that were made to you by the Roman Catholics here as to the feeling of want of confidence?—I had them most fully in my recollection for on any occasions they had been brought to me.

[Captain Ball retired.]

Mr. Commissioner EXHAM.—If there is any witness to be called by either party, or any person anxious to be called to give information to us with respect to the subject of this inquiry, independent of either party, let him come forward now and give his evidence, we are prepared to hear him. It is our duty to do so, and we will do it with pleasure.

No person offering to give evidence,

Sergeant *Armstrong* addressed the Commissioners on the part of the local magistrates of Dungannon.

Mr. *M. J. Barry* was heard on the part of Captain Ball, R.M.

Mr. *McLaughlin* summed up on behalf of the Catholic inhabitants of Dungannon, memorialists for the inquiry. At the conclusion of the learned counsel's speech,

Mr. Commissioner EXHAM said:—This very serious and important inquiry having now terminated, I think it right for myself to make a few observations, and my brother Commissioner will also make a few remarks. I think the importance of this inquiry has not been exaggerated by the counsel at either side, and it is to ourselves a source of the greatest gratification that we have had the assistance of the able advocates who have respectively addressed us. When the memorialists placed their case in the hands of our friend, Mr. *McLaughlin*, I think I only enunciate what is the opinion of all his brethren at the profession in saying, they might rest assured that nothing that great learning, talent, and ingenuity could suggest would be wanting to bring forward their case manfully and fairly. Captain Ball has also had the advantage of the advocacy of a gentleman who is perhaps not in the north as well known as we know him in the south, but the concluding observations of that gentleman amply show that he is not only a barrister of ability, but a true lover of his country; and that no matter what his own religion may be, he wishes to live in kindness with every fellow-citizen and fellow-subject of this country, and also that they should live in harmony and peace. The magistrates on their part have had the professional assistance of one of the most gifted advocates that ever adorned our bar, whose reputation is well known everywhere. From the outset I was delighted to hear, for myself, as enunciated by the Sergeant, a condemnation of those drumming parties stated by him on the part of the magistrates. Now, this inquiry has occupied a considerable time; we have examined, I believe, forty-seven witnesses, and the unanimity of testimony given by all those witnesses is of a most remarkable character as regards those drumming parties. The Sergeant has invited us to state our view of the law, and knowing as I do that my learned colleague, from the judicial functions which he performs in another place, and particularly with respect to the magistracy with whom he is brought in contact so frequently, is especially entitled to express an opinion on the subject, I will leave him to announce

from this bench what we believe to be the law, and what I believe from what he has informed me he has already laid down in other places. I think it better that he should do so, because having done it on former occasions in his judicial capacity, I am sure he will do it in clearer terms than I could hope to do. There were originally two matters involved in this inquiry. With respect to the first inquiry, I can only say that, as Captain Ball was enabled to qualify the language he made use of hurriedly, when put in the witness-box on the former inquiry, I was rejoiced that he took the course which any honourable man would do, namely, if he has committed an error, and believes it to be an error, frankly to atone for it. He has made the *amende*, as far as he could do it, to the magistrates; and I sincerely trust that as long as he may be in this locality, administering justice with them, the cordiality that existed between them up to that, and which I hope will now be renewed, will be uninterruptedly maintained, and that they may both work together cordially and harmoniously for the public good.

With respect to the second branch of this inquiry, the matters stated in this memorial resolve themselves into two classes. The first comprises those demonstrations which take place annually on stated days, and disturb the peace of the whole of the north of Ireland. Mr. McLaughlin has said that probably there may be some in this court who take part in these demonstrations. I was glad to hear Colonel Knox say that the Orangemen represent and believe themselves to be loyal; and if there are any of them here now in court and listening to me, I would suggest this for their consideration, whether they would not show their true loyalty by being loyal to the laws of the land and loyal to their advisers. I was gratified to hear a gentleman in the position of Colonel Knox say that the heads of that party, the intelligent men who belong to that party, were themselves opposed heart and soul to these demonstrations. Mr. McLaughlin and Mr. Barry know that it is not the first time that I heard a similar announcement; for when I had the honour to sit in a more northern district than this on a former inquiry, we had there the gratifying evidence given to us by many leaders of great intelligence on the part of that party, that it was their anxious wish that these demonstrations should cease. And I am not surprised at it, because it occurs to me, and I should feel it if I was a gentleman locally attached to this place, that it would be of the utmost importance to myself, as well as to the gentry, that there should be peace and quietness in the land. Their very labourers and servants must more or less be distracted by it. And what melancholy fact have we every recurring 12th of July in the north? It is a common matter for people to look to the newspapers of the day to see what bodies of troops have been sent down here, in order to keep the great province of Ulster in quietness for that one day. Positively, I believe sometimes there are more troops sent down here than composed the entire British army on some of the hard-fought fields of the Continent in days gone by. And what do you find as the result of the whole day? That actually people in the distant parts of the country are watching for telegrams, to know whether there has been blood shed in the north, and whether lives have been lost or not. Putting the question of the expense to the county out of the case, see how it disunites feelings that ought to exist in harmony, how it separates parties for a time! In another place we actually heard it stated that up to the very evening before particular events, in that splendid city of Londonderry, the opposing parties were the best friends, working together in the same shops, that they separated actually from one another the very night before these occurrences, and that they did not come to meet harmoniously until two or three days after that.

The second of the two classes of matters to which I have referred, is the existence of those drumming parties, and on all hands with a singular unanimity the most respectable of the Roman Catholic party that

were produced here, beginning with the clergy of their church, down to the humblest witness; and then, on the other side, every single magistrate that was examined, Mr. McNece, Mr. Brown—who gives extensive employment at Donoughmore—and the police authorities, all to a man coincide in this, that these drumming parties are dangerous to the public peace; that they are offensive to the Roman Catholic inhabitants of this town, and that if they are not put a stop to, bad consequences will follow. I would take leave to say also that they are worse than useless, and they are wicked in my opinion. They can lead to no possible good. It appears now before us, to the credit of the Roman Catholic people in this town, that it is by the personal exertions of some of them that counter-demonstrations have not been got up here such as have been got up in other parts of the country, and which if they were got up would probably lead to the loss of life. Is it not a melancholy thing that in a town like this, with such a lovely surrounding district, these things will not cease? The parties have heard now the unanimous testimony of the magistrates, and even some of their own clergy, and some of their employers, that these displays are looked upon—and naturally looked upon—as offensive to the Roman Catholic people. The magistrates say that they are positively a nuisance to themselves. I can well understand it. I can well understand the feeling of a gentleman in the position of Colonel Knox in reference to this matter, whose near relative owns, I believe, the greater portion of this town, if not the entire of it, and whose property extends into the surrounding district. I can well understand the feeling with which these matters are regarded by a nobleman like that, giving employment, such as he must, and how these things must distract the minds of his own workpeople, and lead them away from their natural employment and business. And what is all this done for? Only to foment discord, and not to live as men might do, in harmony, as suggested by my friend Mr. Barry. I heard, with great pleasure, the willing testimony borne to the integrity of the magistrates, and it shows, according to my judgment, that the Roman Catholics are not inclined in this town unjustly to press against them. I heard, with pleasure, the feeling testimony borne by all of them to the honour and integrity of the bench of magistrates—I heard every one of them state they would trust their very lives and fortunes in their hands; and I heard also, and it is not so unnatural—I heard it expressed in other places too, that there has been a feeling from things that have occurred—that there is a sympathy between the magistrates and those processionists, and that there is a want of confidence in the bench in those particular cases—that is, I say there was up to the time of this inquiry; but when the magistrates have spoken in the unequivocal manner that I understood them to do; and when I am told that the people of this town repose unlimited confidence in their honour as gentlemen, and when they have on their oaths stated their own anxiety to put down those drumming parties, and have stated their belief that they are intended to insult, and do insult the Roman Catholic population, and say they are even a nuisance to themselves as some of them have said—I would fain hope that probably on reflection there might be after what has occurred a little more feeling at all events in favour of the magistrates, and more confidence with regard to their administration of the law for the future. Now, I can only say that we shall give in our report to His Excellency, as soon as we possibly can, having regard to the fact that the evidence on this inquiry will have to be written out and submitted to us. I shall anxiously go through every word of that evidence, first by myself, and I am sure my learned colleague will do the same, and when we have done it, we shall anxiously consider in consultation the report which we think it our duty to make to His Excellency, supplemented with any suggestions that we think it right to give, within the scope of our warrant, for arming the magistracy, if we

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think it right to make the suggestion, with further powers for the prevention of this cruel evil for the future. I can only say for myself, that if the result of this inquiry shall be that we by our report in any way shall have lent a helping hand to restore confidence in this town towards the magistrates, and to promote harmony between the people, and to put an end to this irritation, which has been going on a great deal too long, I shall look back with pleasure to my connexion with the Dungannon inquiry. If that good result does not follow, all I can say is it will not be my fault, because I shall endeavour, in the anxious discharge of what I feel to be a solemn duty, to make such a report in this case as I hope may be productive of good.

Mr. Commissioner COFFEY.—I have only to say a few words in addition to what my friend and colleague has stated, upon the inquiry which has just concluded. I entirely assent to every word that he has said with respect to the assistance afforded to us by the distinguished professional gentlemen who have taken part in this inquiry. It is a matter of gratification and satisfaction to us, and must be a matter of satisfaction to the public, to be aware that nothing that professional skill could suggest or direct has been absent from an inquiry, the object of which was to elicit truth and go to the bottom of the condition of the administration of the law in this part of the country. I am relieved, I confess most agreeably relieved, from making any observation, or, to some extent, making any report with reference to the first subject of this inquiry; and I agree with Mr. Exham in saying that when a gentleman has hurriedly, or from misapprehension, or want of thought, or want of reflection, used language which conveys—as the language used by Captain Ball undoubtedly conveyed—a serious imputation upon the integrity of the bench as it existed in Dungannon, he would only act the part of a gentleman in wiping it out frankly, unreservedly, and thoroughly, as Captain Ball has done. Now, with respect to the second subject of the inquiry I have this to say. I cannot help feeling and saying that up to the present hour in my judgment the magistrates have been labouring under a grave misapprehension as to the existing law and the powers at their disposal, to cope with that which beyond all shadow of doubt is now confessedly acknowledged to be from both sides of this courthouse, if I may use the expression, the magistrates who are the administrators of the law on the one side, and the parties who are affected by its administration on the other, both to the drumming parties and the Roman Catholic parties, an intolerable plague. I say that up to this moment I think the magistrates have been under a misconception in supposing that ample powers are not at their disposal for putting an end to it. As far as my language is concerned there shall be no misapprehension in laying down what I consider to be the law; and I take leave further to say that it is not the business or the duty of magistrates in the administration of the law in these inferior courts to question for a moment the law as laid down by the head of the magistracy in Ireland, who has at his disposal the fullest means for instructing and informing those gentlemen whom he has admitted into the commission of the peace—it is not for them to question the law as he has laid it down. If he has laid it down erroneously the responsibility rests on him, and none on them, so long as they follow his directions. Now, I must further observe that I think, from what has transpired in this investigation, it is apparent that every single person who represents any portion of the Roman Catholic community located in Dungannon or its neighbourhood has come forward, and, one after the other, they have stated upon their oaths that they have no confidence in the administration of justice from this bench as regarded party cases. The magistrates, one after another, have been asked if they thought that those men, according to their convictions and according to their views and instincts, falsified in their evidence or were capable of misleading by their oaths the bench that they

were informing, and they one and all say that they have no reason to doubt that they are faithfully credible witnesses. In that state of affairs it is demonstrative that, up to the present period, a large portion of the inhabitants of this town regarded with jealousy and distrust the administration of the law as regards party cases. I was pained to hear that evidence given by those men of great intelligence and of position, according to their class in the community as industrious tradesmen, and others; I was greatly pained, but it gave me gratification equal to the pain I felt upon that subject to find one and all united in saying that in all other respects and upon all other subjects there was not in Her Majesty's dominions a bench of magistrates on whom they were entitled to place more implicit confidence. I think it must be equally gratifying to the magistrates themselves to hear their Catholic fellow-subjects who are disunited from them in religious creed and political sympathies, bear that high testimony to their sense of justice and honour; and I take it that what was intended to be represented by those Roman Catholics when they came forward was, that they seeing this bench denuded of any representative of their own class and of their own creed felt what is human nature, and what cannot be prevented as long as human nature is such as is suffered to exist by Providence, alarm, and jealousy, and apprehension. Well, that feeling, no doubt, existed, and the magistrates, to do them justice, appear to have appreciated that, and they appreciated the peculiar position which necessity placed them in, because it has been stated by Mr. McLaughlin as the counsel for the memorialists, and it has been stated by some of the witnesses themselves, that there are not materials in this neighbourhood from which Roman Catholic assistance could be drawn so as to form a component part of the administration of justice on this bench; and one of the gentlemen—indeed two or three of them—stated that they cordially welcomed the appearance of Captain Ball, who is a Roman Catholic, upon this bench to infuse that spirit of confidence that it is desirable always should exist in the minds of those persons who are the subjects of the administration of the law by the bench. And it has been further stated that these memorialists are perfectly indifferent whether the accessions to the bench be Roman Catholics or not, so as they be unfettered and unconnected locally with the rival party, which I am obliged to call the orange party of this town and neighbourhood. That being the state of things now, unquestionably, it is to be hoped that the accession of this Roman Catholic magistrate to the bench will induce the confidence that it is desirable should exist; and I can only say here, for myself, and from this bench, and with whatever authority my position is clothed with, that it is the direct fault of Captain Ball, who comes here as a Roman Catholic, if he sees any shortcomings of duty, if he sees either favour, prejudice, or affection existing, without taking short, sharp, and immediate measures to remedy the abuse. The Roman Catholics have a right to go to the person who is sent here specially to assuage the feeling that might have existed, who has been received here, as the magistrates say, cordially, with a desire to concur with him in the administration of the law; and he has a right to confer with them upon what is necessary, to take counsel with them upon any grievances that he thinks, and is entitled to bring forward, that the Roman Catholics suffer in the administration of the law, to check the apathy of the police, if the police be apathetic, and to bring their conduct if necessary before his brother magistrates and call their attention to it. And, apart from his brother magistrates, his duty and his privilege is to communicate with the police authorities, and point out what he considers their shortcomings. After that exposition of his duty and of his rights, I trust that my words may have the effect for the future of assuaging, allaying, and dissipating what I won't call the unnatural suspicion that hitherto existed.

Now, I do not want, and I do not mean, because I do not think it exactly my duty now to go through

every minute part of the case as it has been proved in evidence. Some things have been proved to demonstration, and there is no conflict of testimony, and therefore there must be a unanimous report so far, namely, that beyond all doubt a system of drumming has been going on here for some time, which latterly has increased and has become more prevalent; that this drumming has gone on practically unchecked, practically suffered to continue; that it is a matter of absolute evidence, uncontradicted, and assented to on all sides, that that system is calculated in the highest degree to exasperate and inflame the feeling of the Roman Catholic part of the population against those parties, and that if it be not checked and put down by the strong arm of the law, by the active energy and co-operation of the magisterial benches, we must look forward to it as the ordinary result of that unchecked flow of events, that counter-demonstrations will be got up, counter-drumming parties brought into existence, with the palpable consequences plain before the eyes of reflecting men; that it will produce effusion of blood, violation of the peace, still more envenomed and embittered acrimony between both sides or different portions of Her Majesty's subjects. Now, up to this, it appears to have been considered by the magistrates that unless the parties came in presence of each other and were about to close in hostile conflict, the arm of the law was powerless and suspended. I take leave now to lay down the law, and I do it not upon my own authority. I do it, first, upon the authority of one of the highest and ablest judges that ever distinguished and ornamented the English bench, that is, Baron Parke, one of the greatest lawyers that have ever been exhibited to the admiration of a people who love a man of learning, and a man of impartiality. And I must observe, for the purpose of this inquiry, that, turning to page 52 of this report of the Donoghmore Riots Inquiry, I find that Mr. Moloney and other magistrates stated their opinion of the law before the Commissioners, that they could not interfere unless the parties were coming into contact together, and that there was there and then, in the presence of rival parties, imminent danger to the public peace. Lord Chancellor Brewster says, commenting on this notion—and let me again call the attention of those in authority here who are listening to me to this, that Lord Chancellor Brewster happened, during the administration, of which he formed part, to be the head of the magistracy of Ireland. Upon his advice and recommendation the commission of the peace was given to some, probably, of the magistrates who listen to me. After reviewing the evidence of those gentlemen who stated that that was their apprehension and view of the law, he says:—

“Considering, however, that these and similar opinions had produced complaints against the administration of justice, and that unless corrected they are likely to be productive of results most injurious to the public peace by misleading those unacquainted with the law, his lordship deems it necessary to state what is the law applicable to the offence of illegal assembly and riot as laid down by the highest authorities. The Commissioners in their report have, as to the offence of riot, quoted the opinion of Mr. Baron Bramwell as follows”:—

Now, I do not think it necessary to read that, because it does not bear upon any of the cases that came before us, except that of the parties that came into the town and conducted themselves in a tumultuous and violent manner, firing shots and assailing with stones the windows and habitations of other persons in the town, and I take for granted that there is no magistrate or no person who listens to me to whom it is not perfectly plain and apparent that that was an absolute and formidable riot. A riot consists of three or more persons assembled together for a lawful or unlawful purpose, and carrying out their design, or attempting to carry it out by violence, with aggression or actual breach of the peace. Here, the fact of people coming into this town and firing shots and attacking habitations—that, apart from drumming parties or unlawful assemblies,

or apart from any other consideration at all, constitutes a riot, and all persons present at this demonstration, either taking an active part, or assenting, by their presence, to it, are guilty of riot and amenable to the law; and that I take for granted the magistrates have no difficulty about. But the question that gave a difficulty to their minds was the question of unlawful assembly. Another learned judge says:—

“It may be safely said that an assembly of great numbers of persons which from its general appearance and accompanying circumstances is calculated to excite terror, alarm, or consternation, is generally criminal and unlawful.”

I pause here, before I go on with the extract, to know whether there is any person in his senses who upon hearing the testimony of Mr. Smith, the sub-inspector, and Mr. Heard, the inspector of the county at large, the responsible officers kept and paid for the purpose of preserving the public peace, they having sworn that those drumming parties are calculated in the highest degree to exasperate, to envenom, to irritate, to provoke, and to lead to breaches of the peace are intended as challenges to fight, can have a doubt whether that language applies to such cases as these? The extract goes on to state that—

“All persons who form an assembly of this kind, disregarding its probable effect and the alarm and consternation that are likely to ensue, and all who give countenance and support to it are criminal parties. Whether any particular meeting be of a lawful or unlawful description must depend on the circumstances under which it is held, the manner in which it is brought together, the conduct and demeanor of those who attend it. These being questions of fact must be submitted in all cases to the judgment and determination of a jury; but in order to get the determination and judgment of a jury, the magistrates must act in the first instance—first a grand jury, and then a petty jury, if the bill of indictment be found true.”

And it is not possible for a judge to lay down as a matter of law the precise boundary between a lawful and unlawful assembly. I cannot do it here; but if I were here presiding and heard drums beating outside and fifes playing and knew that a number of persons were assembled together, and had the conviction on my mind from the statements of faithworthy persons in their informations that a challenge was meant by this display, was calculated at some future place or with some future assemblage two miles off to lead to a breach of the peace, I should have no hesitation then in laying down the precise boundary, because the facts would be before me. And so here is what the judge says—

“The essence of criminality in such cases is the terror and alarm with which the peaceable and quiet subjects of Her Majesty must almost necessarily be affected, even those who are endowed with firmness and resolution, and therefore I have no hesitation in saying that such tumultuous assemblies at night can hardly under any circumstances be otherwise than criminal.”

That is to say, the judge says that at night he cannot conceive a case that would not be criminal, but in the broad daylight it is not less criminal. He continues:—

“I speak of the general law of the land applicable to all places in Her Majesty's dominions, and a proceeding by indictment, with which alone we have to do, against persons forming part of such meetings, whether as leaders or instigators of them, or idle and sometimes merely curious spectators, joining in such meetings without considering that by their so doing they are swelling the apparent numbers of them, and increasing, however unwittingly, their power of mischief.”

Another extract in this report is from the charge of Baron Alderson, which is adopted by the Lord Chancellor:—

“I take it to be the law of the land that any party assembled under such circumstances as according to the opinion of rational and fair men are likely to produce danger to the tranquillity and peace of the neighbourhood is an unlawful assembly.”

Now those paragraphs that I have read are not the opinions of Lord Chancellor Brewster, but the opinions

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of the judges of England; but Lord Chancellor Brewster, being a lawyer himself, I need not say, of great eminence and position, placed at the head of the magistracy of Ireland when this opinion was written, observes, by his secretary—

“His lordship directs me to inform you that, adopting the law thus laid down, as he does to its fullest extent, he finds all the elements necessary to constitute a *prima facie* case of illegal assembly in the Donoghmore riots.”

Having laid down that exposition of the law in the performance of what I consider a solemn duty, and having mentioned my views to my colleague and friend, Mr. Exham, he thoroughly indorses the law as I have laid it down. I thought in a case like this I was warranted in doing an unusual thing—asking a gentleman who is himself one of the Queen’s servants, and who next week or next month may be called upon to preside as a judge of the land, who has himself presided as a judge of the land before—in calling upon him in the interests of public tranquillity in this neighbourhood, to announce and to state what he considers the law; and he has done me the favour of indorsing my exposition of it with his high authority. I have only one word further to say upon the subject of the law, and I take leave to announce it, with the authority of my friend, that it is a mistake to suppose that the action of the law is to be stayed, and if I may use the expression, the hand of the law to be paralysed and suspended, until the drumming party going from this town or any other place comes into collision with an opposing party. It is then too late, and neither law nor common sense justifies parties in waiting till the actual conflict commences or is upon the point of commencing. The great object of the law is to prevent and deter; its secondary object is to punish when the crime is consummated. Having made these observations I have but one or two more words to say, which I think I am bound to do, because I think we should not leave this town, where imputations have been made, or facts and circumstances adduced from which inferences are drawn to the prejudice of any parties living in the neighbourhood, without endeavouring to set the matter right. I think it our duty to express our opinion, if we can do so, on the evidence, clearing up anything reflecting on the character of persons we leave after us. Having referred to this I may say that it is to me a matter of the most entire and perfect indifference that I should stand well with one party or ill with another, because my occupation and training make me perfectly indifferent to results, so as that I discharge my duty. Now, certain imputations were made upon Mr. Lyle, that left an opinion that might do him some prejudice in the neighbourhood; and I am bound to say that, as the case stood until explained, I do not wonder that there were feelings existing against him, and prejudice entertained; but upon the explanation given by that gentleman, in my humble judgment the foundations for them have been most entirely swept away, not leaving a shade or shadow of foundation for their existence. Mr. Lyle has been accused of having had orange processions going through his lawn. The explanation of that is most perfect and satisfactory. It was the spontaneous

action of a policeman, done in Mr. Lyle’s absence; but I will add that if he were there, and those men were passing through his lawn, and marching in it with his assent, encouragement, or approbation, it would powerfully assist in giving cause for those who were to be affected by the administration of law by him from the bench in party cases, to suppose that he sympathised with those people. Mr. O’Neill through misapprehension said that those bonfires were existing for several years. I am sure he did not intend wilfully to misrepresent and mislead; and I differ from the Sergeant when he supposes that that representation was intended to be made by him actually as to actual facts, because he states in his letter “I will come forward and give my evidence.” Well, his oral testimony on the other hand is that he saw them, as he believes, but upon two occasions. Mr. Lyle says there never was a case, with his knowledge or permission, but that after this charge was made he discovered that his son had once, quite unknown to him, held up a torch, giving vent to his own feelings without the approbation of his father. I have only to say that my sons sometimes do things I don’t like, and I don’t know it until after the mischief is done, and most people in the community labour under the same disadvantage. With respect to Mr. Stanley, I have only to say that the words that he used on that occasion were, in my judgment, very indiscreet, and that I am sorry that he did not, for his own sake, previous to this, give the explanation which he did yesterday upon oath in the box, because it left that sting to remain, and that sore to fester, until he gave his explanation. But, having given that explanation, I do not think there is a fair minded or candid man in the community that won’t relieve him entirely from the charge of making light of, or considering as trivial, the offence of attacking a Roman Catholic place of worship, or any place of worship, because I must suppose him, which I don’t suppose him, devoid of the instincts of a gentleman if he would give countenance to an outrage being committed against a place of worship of any portion of the community. I have only to say, in conclusion, that if any reflection has been made upon Mr. Hayden in the letter of the magistrates, in my judgment a fairer witness, a more candid man, a more outspoken one, or one who has shown more anxiety for the prevalence of tranquillity, and to put down turbulence and disorder, it has not been my good fortune to see. He has done great service to the community, according to the testimony of the population; and I look upon him as a very valuable citizen of this town, where his influence has assisted, with that of others, in preventing those counter-demonstrations and counter-drumming parties which I have not the least doubt would, if formed, inevitably lead to a breach of the peace. With my friend Mr. Exham, I shall carefully go over this evidence, and according to our judgment and conscience we will give that report to the executive which the nature of the case demands.

Mr. EXHAM.—I indorse everything Mr. Coffey has said with regard to the three individuals he has alluded to.

APPENDIX.

LETTERS AND DOCUMENTS.

LETTER from the UNDER-SECRETARY, T. H. BURKE, esq., to the COMMISSIONERS, transmitting WARRANT.
10th August, 1871.

Dublin Castle, 10th August, 1871.

GENTLEMEN,—I am directed by the Lord Lieutenant to transmit herewith His Excellency's warrant appointing you to hold an inquiry into certain charges which have been preferred against the magistrates of the Dungannon Petty Sessions district.

I am also to enclose a file of papers in connexion with the case.

I am desired to request that you will give due notice to the several parties concerned of the time and place at which the inquiry is to be held—in the case of the magistrates, making your notification through A. Mackenzie Lyle, esq., J.P., Donaghmore House, Dungannon.

I am, gentlemen, your obedient servant,

T. H. BURKE.

William Allen Exham, esq., Q.C., and
James Charles Coffey, esq., Q.C.

GAZETTE NOTICE, 12th August, 1871.

COUNTY TYRONE MAGISTRACY.—DUNGANNON PETTY
SESSIONS DISTRICT.

Whereas His Excellency the Lord Lieutenant of Ireland, did by Warrant under his hand, bearing date the 10th day of August, 1871, nominate and appoint William Allen

Exham, esq., and James Charles Coffey, esq., two of Her Majesty's Counsel, to hold a Court of Inquiry at Dungannon, in the county of Tyrone, there to investigate and inquire into certain charges and allegations alleged to have been made by Alexander Ball, esq., Resident Magistrate, of and concerning the administration of the law by the Magistrates of the district of Dungannon, in said county, and touching and concerning the complaint of the magistracy of said district, against the said Alexander Ball in respect thereto; and also into the complaint of divers of the inhabitants of said locality in respect of the administration of the law therein :

This is to give notice, that an Open Court of Inquiry will be held by the said William Allen Exham, esq., and James Charles Coffey, esq., in the Court-house of Dungannon, in said county, on Wednesday next, the 16th day of August, 1871, at the hour of eleven o'clock, in the forenoon, and from day to day, until the inquiry into said matters and things mentioned in His Excellency's Warrant shall have terminated, of which all parties concerned are hereby required to take notice.

Dated this 12th day of August, 1871.

By order of the said

WILLIAM ALLEN EXHAM, Q.C.
JAS. CHAS. COFFEY, Q.C.

PETER FLANAGAN,
Clerk of said Commissioners.

LETTER from the CLERK of the COMMISSION to the MAGISTRATES and MEMORIALISTS, 12th August, 1871.

53 Lower Dominick-street, Dublin,
12th August, 1871.

SIR,—I am directed by the Commissioners mentioned in the enclosed *Gazette* Notice to forward same for your information and that of the magistrates associated with you, and to add that they will be glad to afford every facility in carrying on the inquiry they are directed to hold. They will sign any summonses that may be required for the

attendance of witnesses, or to enforce the production of documents.

I have the honour to be, sir, your obedient servant,

PETER FLANAGAN,
Clerk of said Court of Inquiry.

To A. Mackenzie Lyle, esq., J.P.,
Donaghmore House, Dungannon.

(A similar letter was addressed to the Honorable W. Stuart Knox, M.P.; Alexander Ball, esq., R.M.; Courtney Newton, esq., J.P.; A. L. Nicholson, esq., J.P.; Very Rev. Dean Slane, P.P., V.G.; Rev. M. Hughes, C.C.; Rev. P. Corr, C.C.; and Mr. John Hayden.)

LETTER from MR. JOHN HAYDEN to the UNDER-SECRETARY enclosing MEMORIAL of CATHOLIC INHABITANTS of DUNGANNON, 24th June, 1871.

Dungannon, 24th June 1871.

SIR,—A deputation of gentlemen would have been most anxious to wait upon His Excellency to urge upon him the prayer of the accompanying memorial, if permitted to do so; but they have observed with regret that His Excellency has gone to London, where they could not conveniently wait upon him for that purpose. On their behalf, and on behalf

of the memorialists generally, may I request that you will be good enough to forward it at once, through the Chief Secretary, for His Excellency's consideration,

And I am, sir, your obedient servant,

JOHN HAYDEN.
Thomas H. Burke, esq., Dublin Castle.

PARTICULARS of SPECIFIC ACTS relied on by the ROMAN CATHOLIC MEMORIALISTS in SUSTAINMENT of their CHARGES, furnished 16th August, 1871.

DUNGANNON ROYAL COMMISSION OF INQUIRY.

SIR,—Take notice, that I herewith, on behalf of the memorialists, furnish you with the following particulars of the occasions on which it is alleged that the magistrates and police failed to do their duty; and take further notice, that I furnish you with the same in obedience to the order of

the Commissioners, and on the terms referred to in said order:—

July, 1864—1. Orange assembly near Dungannon chapel, and opposite parish priest's house at Dungannon.
12th July, 1865—2. Orange procession and wrecking of houses.

7th August, 1865—3. Like and firing of shots.
 September, 1866—4. March of Orangemen to Donaghmore, near Dungannon; riots and firing of shots.
 December, 1867—5. Drumming party at Dungannon chapel, when people were coming at night from public worship.
 1st July, 1868—6. Stone-throwing and wrecking of houses at Dungannon, on return of Dungannon Orangemen from Lisburn excursion.
 19th February, 1867—7. Stone-throwing, firing of shots, drumming, and window breaking on occasion of burning of effigy.
 23rd April, 1869—8. Breaking of chapel windows and windows of Mr. Houston by Orange party.

12th July, 1869—9. Orange procession through Dungannon to Killyman; riots, stone-throwing, and firing by Orangemen at the Catholics.
 18th April, 1870—10. Killyman funeral case.
 24th February, 1871—11. Drumming party at Perry-street, Dungannon.

Dated this 16th day of August, 1871.

H. M'MORDIE, solicitor for the memorialists.

To Henry Russell Kelly, esq.,
 Solicitor for the magistrates, Dungannon.

LAW ADVISER'S OPINION of 9th December, 1869.

Every assembly of a number of persons which, from its general appearance, and the accompanying circumstances, is calculated in the opinion of reasonable men to excite terror or alarm, or to produce danger to the tranquillity and peace of the neighbourhood, or to lead to a breach of the peace, is an unlawful assembly, and every person concerned in it is indictable at common law for a misdemeanor. If (as would appear from this file to be the case) the drumming parties in question are assemblies of this character, it makes no difference, in my opinion, whether they assemble in a public street, or place, or in a field. The police should summon and apply for informations against the most prominent of the parties concerned in such assemblies, and the magistrates should receive informations and send such parties for trial. In simple cases, it may be sufficient to

bind the parties to good behaviour. As these drumming parties have not hitherto been interfered with, it would be a prudent step if the magistrates would take an opportunity to announce the law from the bench, caution the people against such practices, and state their resolution to preserve the peace and tranquillity of the town and neighbourhood by enforcing the observance of the law. If the noise merely—apart from the question of the peace of the place—disturbs the inhabitants, it is a public nuisance which the inhabitants who complain of it may prosecute. The circumstances of this case do not enable the magistrates to deal with it effectually under the "Towns Improvement Act."

W. M. J.

9th December, 1869.

DEPOSITIONS with reference to the BREAKING of the WINDOWS of the ROMAN CATHOLIC CHAPEL and HOUSTON'S HOUSE at DUNGANNON, on the evening of the 23rd April, 1869.

No. 1. Petty Sessions District of Dungannon, County of Tyrone.

Depositions of THOMAS SCULLY, Town Sergeant, and acting as such.—Was acting as such on the 23rd April, '69. Recollects the evening of 23rd April; about half-past eight, heard music, and saw people coming from the direction of Northland-row, and entering Perry-street. Came up Perry-street as far as Short High-way. A small number, about thirty or forty, came up Perry-street. They were playing music coming up Perry-street. Was close to them. I had no conversation with any of them at that time, nor did I know any of them when in Perry-street or Short High-way. I parted with them, and shortly afterwards heard two parties playing music. The second party I saw coming from the direction of the Old Caledon-road, and coming towards the town. The first party went out of town by Mr. Dixon's mill, in the direction of the Caledon-road, by a road that leads to the Caledon-road. I did not see the two parties meet. I saw a party afterwards coming in by the Washington-road, a party coming into the town by the Caledon-road, and one by Mr. Dixon's road. Could come in by the Washington-road. Did see a party coming in by the Washington-road, playing music, which went up Short High-way. This party might consist of 200, including men, women, and children. I last saw this party at the cross roads leading to Killyman, below the chapel, and beyond it. They played music until they came to the end of Perry-street, next Northland row. They stopped playing then on account, I believe, of Dr. Twigg's illness. They commenced playing again about the chapel or beyond it. I came up with this party from Washington-road to the corner of the chapel. I saw Robert Frizelle in Northland-row, walking like many others. He walked alongside of me part of the way. I saw no other parties that I knew in the crowd. Frizelle was on the outskirts of the crowd. I did not see Frizelle at any time there was music playing. I did not see Frizelle take any active part in the crowd. He was merely walking about like many others there. I did not see him speak to any person but myself.

THOMAS SCULLY

Taken and sworn before us this 10th day of May, 1869.

Cross-examination by Mr. COCHRANE.

I only knew one tune they were playing, "The girl I left behind me." I did not see the crowd make any disturbance. I would suppose the crowd was made up of Roman Catholics and Protestants, but I would not swear it. I saw the crowd go past the chapel, and I neither heard nor saw any disturbance. I was close to them at the time.

THOMAS SCULLY.

A. MACKENZIE LYLE,
 16th May, 1869.

No. 2. Petty Sessions District of Dungannon, and County of Tyrone.

The depositions of JAMES BLAKE, Sub-Constable, Irish Constabulary.—Was on duty 23rd April last in town of Dungannon, where I have been quartered for the last two years. Heard music on said evening—fifes and drums. Was standing at the barrack door. Heard it in the direction of Perry-street. Proceeded in the direction with Sub-Constable Peter M'Keown. Went to see what it was, and when we got to Perry-street the music had proceeded down Short High-way. I followed in the direction to the fall of the hill, when I came up with the crowd, which consisted of about twenty or thirty. The crowd halted there for a moment, when they then proceeded in the direction of the Orange lodge in Milltown. They passed the lodge and went on in the direction of Mr. Dixon's mill. I saw no other party at that time. Sub-Constable M'Keown and I went back to the barrack round by Milltown. I saw them last turning up the road beyond the Dixon mill. I did not see any other number of persons at that time. At the barracks, I afterwards heard music. This was about half an hour or three-quarters after I heard the first. I did not see them again after I first came up with them at Short High-way, where they had halted. I saw Joseph Glenny in the crowd mixed up with the men who had the fifes and drums. I did not see him doing anything. When the crowd moved on Glenny went along with them. He was still mixed up with them as far as I could see. During the time he was with them there was playing of fifes and beating of drums. I cannot say what tune they were playing. I did not know any person else in the crowd.

JAMES BLAKE, S.C., 15,621.

Cross-examination by Mr. PERCY.

There is an amateur band and militia band in the town. I cannot swear whether they were playing that evening or not. I distinctly swear Glenny was there, and he was the only person I knew in the crowd. I did not speak to him, though I was close to him. He was mixed up with them. I was within two yards of him. I saw him doing nothing. I did not speak to anyone in the crowd, nor caution them. The crowd consisted of men, and boys, and little girls. I saw no firearms, or banners, or an Orange handkerchief. I did not know what tune they were playing. I always heard they had a lodge in Milltown, except a short time I heard they had it in Union-place.

JAMES BLAKE, S.C., 15,621.

A. MACKENZIE LYLE,
 10th May, 1869.

No. 3. Petty Sessions District of Dungannon, and County of Tyrone.

Depositions of Sub-Constable PETER M'KEOWN, Royal Irish Constabulary, who being duly sworn, saith:—I accompanied Sub-Constable Blake down to Perry-street, having heard drums in that direction. We came up with the party at Short High-way. They were standing at cross roads then. They had drums and fifes with them. As soon as we made our appearance a man of the name of Richard Hodget stepped out and said, "Come on boys with the music." They went in the direction of Milltown. Whenever they began to move they played music. I could not say the tune they were playing. They went on past what they call the Lodge. I also saw Joseph Glenney in the crowd, and he proceeded with the crowd after Hodget called them to go on with the music. I cannot say whether I saw or heard any music or the militia band that night afterwards. I am quartered about three years in Dungannon.

PETER M'KEOWN, S.C.

Cross-examined by Mr. COCHRANE.

Was in court when Sub-Constable Blake's depositions were read over to him, and heard it read. I cannot say whether I heard any other music that night or not. I did not hear that a showman had a band in town that night. I have known Hodget for the last three years. He has two brothers something like him. I will swear it was Richard Hodget I saw. I did not speak to him. Sub-Constable Blake had as good an opportunity of seeing him as I had. I was about seven yards from him. I was close beside Glenney, and not nearer to him at any time. I cannot say whether Sub-Constable Blake knows Hodget or not. I am on speaking terms with Hodget, but did not address him on that night. I was the junior sub-constable, and did not speak to any of them. They were doing nothing at the time, and I did not consider it necessary at the time to caution them, and I did not caution them at any time. The crowd consisted of men, women, and children, in all about thirty. I did not know any of the tunes.

PETER M'KEOWN, S.C.

A. MACKENZIE LYLE,
10th May, 1869.

No. 4. Petty Sessions District of Dungannon, County of Tyrone.

The depositions of JOHN HOUSTON, who being duly sworn, saith:—I live in Park-road. It is called Short High-way. Remember the evening of the 23rd April last. Recollects a party coming down the street. Passed my door in direction of Milltown. They had music—drums and fifes—and were playing, as well as I can recollect, "The girl I left behind me." I saw two of the constabulary immediately passing down after them. I did not know one in the crowd. There was a number of fifes and drums with them. There was thirty or forty in the crowd. About half an hour afterwards a party passed up the street, playing fifes and drums, consisting of about 200. When the centre of the body was passing by a stone was thrown into my kitchen, which broke a pane of glass in the window. They passed down Perry-street towards Northland-row. I was caused great alarm by this occurrence in consequence of the illness of my wife, who had lately been confined.

JOHN HOUSTON.

Cross-examined by Mr. COCHRANE.

My wife had been very ill previously, but was going on favourably on that day, the 23rd April, 1869. I was not alarmed by the drums myself, but was afraid my wife might get a fright by them. There is an entry to a court nearly opposite my door. I will not swear whether or not there was anyone standing in that entry. I was quite sober that day, and did not take a tent of any spirituous liquor or beer that day. I had lodgers in the house. There was no person in the house at the time but Mr. O'Brien and John Toner, besides my own family. They were in the same

kitchen with me (O'Brien and Toner). On the night of Mr. Dowse's effigy being burned, a pane of glass in my window was broken, but I did not see it myself.

JOHN HOUSTON.

A. MACKENZIE LYLE,
10th May, 1869.

No. 5. Petty Sessions District of Dungannon, County of Tyrone.

Depositions of FRANCIS DALY, who being duly sworn, saith: I am the school-master at the National school at the corner of Northland-row. Recollects the 23rd of April last. Was in the school from about half-past seven until a quarter past nine o'clock. About eight o'clock I was standing on the stairs leading to the upper apartment. I heard music in the direction of the Back-road, as if coming into town. The music passed the school. I can't say anything happened at the time. I saw the chapel windows about six o'clock on the 23rd April. There were two panes broken then, and which had been broken for some time previously. There were no panes broken at six o'clock but the two. I neither saw or heard any party again pass the school same night. Next morning I saw four additional panes broken in the chapel in the side facing the road. I went into the chapel and found two stones in it.

FRANCIS DALY.

Cross-examined by Mr. YOUNG.

I only teach the male school. I was not in the chapel that day, or for some days previous. I was in it on the Sunday previous. I searched for the stones, but only found two. I searched again, and found none. There was marks on the window frames, and some stones may have fallen outside. They appeared to have been quite recent. The window is about sixty feet from the road. I did not take more particular care that day than any other day. My boys sometimes play ball in the yard; they might break a pane by mistake, but it could not be without my knowledge. I was not walking with the drumming party that night.

FRANCIS DALY.

Re-examined by Mr. MOORE.

There were marks on the gable of the chapel as well as marks on the window frames, as if stones had been thrown against it. About two dozen of stones had been thrown against it. About two dozen of stones was lying outside.

A. MACKENZIE LYLE,
10th May, 1869.

FRANCIS DALY.

No. 6.—Petty Sessions of Dungannon, county of Tyrone.

The depositions of MARGARET JANE MILLIGAN, who being duly sworn, saith:—I am a servant to Mr. Powell. He lives close to the chapel. Recollects evening of the 23rd April. I heard a drumming party pass the door. About an hour and a half afterwards I heard a party again passing the door, and going towards the Killyman-road, and saw them. I stood for nearly ten minutes at the door, when I came in and went out to the yard, when I heard glass as if falling. I heard it twice, and I thought it was next door. I returned to hall door, when I saw two little boys standing on the road. I saw three others further down at Mr. Newton's corner. I saw some panes of glass broken in the chapel window next day.

her

MARGARET JANE + MILLIGAN
mark.

Cross-examined by Mr. COCHRANE.

I do not know who the three boys were at Mr. Newton's corner. I stood at the hall door until the drumming party had passed; they were about twenty minutes passed when I heard the glass breaking. I did not know any of the boys on the road.

her

MARGARET JANE + MILLIGAN
mark.
A. MACKENZIE LYLE,
10th May, 1869.

DEPOSITION of Head Constable HENRY STEWART in reference to the transaction of 18th April, 1870.

The deposition of HENRY STEWART, of Dungannon, in the parish of Drumglass, and county of Tyrone, who saith on his oath that:—I am head constable of police stationed at Dungannon. Remembers the 18th inst., Easter Monday. My attention was called to a party beating drums and playing a fife. The party consisted of between forty and fifty. The party was in Dungannon, on the road between Mr. Dickson's gate and the Moy Wood. Recognised Edward Hodgett, William Hyde, Samuel Miller, Andrew Little, Arthur Abernethy, and Crawford Hyde, here present,

except Little. Did not take the names of any but those who were playing. I did not hear them play what I knew to be party tunes, but I am not a good judge. The party went towards Moy, about a mile out of Dungannon, playing occasionally. When they came to the cross-road leading to Killyman they halted for a little, and then proceeded on the road towards Killyman. At this point Robert Anthony, Mr. Reynolds, James Thompson, and John Willis played the drums; they are here present, except John Willis. I returned to Dungannon, directing Constable Lynch, Sub-

Constables Clark and M'Partland to go further on. Did not see any occurrence in the slightest degree likely to produce a breach of the peace while I was with the party. I saw no party emblems with the party. As a reasonable man, I did not see anything calculated to excite terror or alarm, or to produce danger to the tranquillity and peace of the neighbourhood, or to lead to a breach of the peace. My reason is that since I came to the neighbourhood I observed these drumming parties frequently, and never knew of any disturbance arising from them. In my opinion, if an opposing party had been on the road there would have been danger of a collision, but I saw nothing in the party to produce such collision. Several times I requested the party to go back and leave their drums, but they would not. I made this request on account of the order of the magistrates, in consequence of the law officer's opinion read at last petty sessions. Besides the constables I sent on there was with me Acting-Constable O'Brien, Sub-Constables

Colgan and Welsh. I joined the party about eleven o'clock in the morning. Cross-examination—The parties conducted themselves peaceably and quietly so long as I remained with them. I saw no firearms. The party at one time told me they were going to a funeral at Killyman, and at other times to leave the drums at a place called Mozgashell. I did not see any offensive weapons with the party. I heard no offensive words used. With the party from Dungannon there were some Roman Catholics. Considers there were half a dozen. None of the Roman Catholic party or any others complained to me of the music, but I heard people remarking that it was a shame for them to continue beating the drums after being warned.

Sworn before us the 25th April, 1870.

(Signed)

COURTENAY NEWTON.
A. F. BALL.

Henry-street, 2nd Court.

DEPOSITIONS of Constable JOHN LYNCH and Sub-Constables EDWARD CLARK and FRANCIS M'PARTLAND in reference to same transaction, 18th April, 1870.

The depositions of Constable JOHN LYNCH and Sub-Constables EDWARD CLARK and FRANCIS M'PARTLAND:—

Are stationed at Dungannon. We went with Head Constable Stewart as far as the town of Killyman. If no opposing party met them, the party with the drums did nothing to provoke a breach of the peace, and we concur in the deposition of Head Constable Stewart on this point. We went after the party until they went into the graveyard. We stopped at the gate. On the road two other men, calling themselves Feris and Wilson, and several others not known to us, beat the drums. The crowd greatly increased between where we left the head constable and the graveyard. We caused summonses to be issued against the two parties above-named, but they could not be found at the residence given by them. At the gate the crowd increased to two hundred. The crowd huzza'd, and made use of derisive remarks, like as if we were not wanted there, and the party remained in the graveyard about three-quarters of an hour. When the crowd huzza'd, Constable Lynch states he was afraid. Constables M'Partland and Clark say they were not afraid. Constable Lynch considered it was not judicious to go down into the graveyard, and kept the men from doing so in consequence of the aforesaid remarks of the crowd. Some of the party in the churchyard had Orange scarfs. At ten minutes to one o'clock they left the churchyard. Robert Rice was with them, playing the drums. They went towards Dungannon. At this time there were eight drums, two fifes, no scarfs or colours. The crowd came as far as the first cross-road. There were about fifteen men dropped out of the crowd who gave a shout. They called us "dog-pelters," "pig-hunters," and "bobbies," and hooted us. Do not know any of those fifteen men. Went on to Laghey corner. A good many of the party stopped there. We passed on towards the Bush. A man

told us to go the other road. Sub-Constable M'Partland turned round and told him to be guarded in his observations. We went on towards the Roman Catholic chapel. Between Laghey and the chapel a stone was thrown of 1½ lbs. weight. At this time the main body was in front, and the man M'Partland so spoke to was behind. The parties now present were with the main body, except Miller. An old man then passed us by, with an Orange scarf on him, from behind to the body before. We do not know him. When we came to another cross-road a portion of the party stopped and hooted us as we passed. Some of those who stopped passed us again to the front party. At this time we saw another Orange scarf. One of the men had an Orange handkerchief and waived it round his head, and shouted "No surrender" repeatedly. Cross-examination—None of us knew any party tunes having been played during the entire time. We saw no firearms. At ten minutes after two they left the drums there, and the crowd broke up. Saw no breach of the peace committed that day only that stone being thrown. We cannot say that any of the parties now present were of the party when the stone was thrown, but Miller passed by us shortly after. Constable Clark did not see the stone thrown. Some of the parties now charged were not at Killyman, so far as we saw. Constable M'Partland states that he is sure the stone was thrown at him.

(Signed)

JOHN LYNCH.
FRANCIS M'PARTLAND.
EDWARD CLARK.

Sworn before us the 25th day of April, 1870.

(Signed)

COURTENAY NEWTON.
A. F. BALL.

LETTER from the Honorable W. STUART KNOX, M.P., to the Right Honorable the LORD CHANCELLOR, 26th June, 1871.

5, Seymour-street, Portman-square,
London, June 26, 1871.

MY LORD,—Having this day seen a copy of the *Belfast Morning Star* of the 24th inst., in which Captain Ball, a.m., is stated to have given certain evidence before a Court of Inquiry inculpating the conduct of the Dungannon magistrates and constabulary in certain party cases, and being also informed that my brother magistrates have forwarded to your lordship an urgent request that you will be pleased to direct Captain Ball to furnish them with a detailed state-

ment of the facts on which he relies to substantiate the serious charges he has made, I beg respectfully on my own behalf to indorse the request, and to add, that had I been in Ireland my name would have been included with theirs in their letter to your lordship dated the 24th inst.

I have, &c.,

(Signed) STUART KNOX.

To the Right Honorable the Lord
High Chancellor of Ireland.

LETTER from LORD CHANCELLOR'S SECRETARY to A. MACKENZIE LYLE, esq., J.P., 3rd July, 1871.

Lord Chancellor's Secretary's Office, Four Courts,
Dublin, 3rd July, 1871.

SIR,—With reference to your letter dated the 24th ult., and the statement of certain magistrates of the Dungannon district annexed thereto, I am directed by the Lord Chancellor to acquaint you that the resident magistracy being under the control of the Executive Government, and not

of his lordship, any application affecting the conduct of any of the body should be addressed to His Excellency the Lord Lieutenant.

I have, &c.,

(Signed) THOMAS URINGTON.

A. Mackenzie Lyle, esq., J.P.

